Health Services
LOS ANGELES COUNTY

# ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

32 May 15, 2012

SACHI A. HAMAI
EXECUTIVE OFFICER



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*To ensure access to high-quality, patient-centered, cost-effective health care to Los Angeles County residents through direct services at DHS facilities and through collaboration with community and university partners.*

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May 15, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF AN INDEMNIFICATION AGREEMENT WITH THE LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY (ALL SUPERVISORIAL DISTRICTS (3 VOTES)**

## SUBJECT

Request approval of an Indemnification Agreement between the Local Initiative Health Authority for Los Angeles County, dba L.A. Care Health Plan and Department of Health Services.

## IT IS RECOMMENDED THAT YOUR BOARD:

Authorize the Director of Health Services (Director), or his designee, to execute a no-cost Indemnification Agreement with L.A. Care Health Plan (L.A. Care) to mutually indemnify the parties and establish their rights and responsibilities pertaining to L.A. Care's software license contract with McKesson Health Solutions LLC (McKesson) and the access by the Department of Health Services (Department or DHS) under that contract as an authorized user of McKesson's Interqual clinical guidelines, technical support, and training at no cost to the County, effective on Board approval for a term that is concurrent with the term of L.A. Care's contract with McKesson.

## PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommendation will allow the Department to execute the Agreement (substantially similar to Exhibit I), and access the evidence-based clinical guidelines required by L.A. Care and State Department of Health Care Services when conducting utilization review of medical care for managed care enrolees assigned to DHS and Healthy Way LA beneficiaries, respectively.

## Implementation of Strategic Plan Goals

The recommended action supports Goal 4, Health and Mental Health of the County's Strategic Plan.

## FISCAL IMPACT/FINANCING

Not applicable. There is no fiscal impact related to this no-cost Agreement and DHS' use of McKesson's contract with L.A. Care.

## FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On November 15, 2011, your Board approved delegated authority to the Director to execute an agreement with L.A. Care to structure their long term financial relationship and provide for the orderly transition of the Department's Community Health Plan (CHP) and its operations to L.A. Care so that CHP staff could perform the Medical Service Organization function in managing the patients treated at the DHS hospitals, clinics and other health care facilities. As a result, the Department negotiated and the Director executed the Community Health Plan Transition and Safety Net Support Agreement (Safety Net Support Agreement).

The terms of the Safety Net Support Agreement provide for L.A. Care to establish and fund the DHS Ambulatory Care Network Quality Improvement Program, to procure goods and services at the direction of DHS for the benefit of the DHS Ambulatory Care Network. The authorized use by DHS of McKesson's Interqual clinical guidelines software, training and support is consistent with the purpose of the DHS Ambulatory Care Network Quality Improvement Program.

Because DHS will be the user and beneficiary under the L.A. Care software licensing agreement with Interqual to be installed in DHS' systems, DHS has agreed to take on the responsibilities under L.A. Care's agreement with McKesson, except for the requirement to pay McKesson which will remain with L.A. Care. In addition, the indemnification agreement, provides that each party shall indemnify, defend and hold harmless the other party with respect to the any breach of the terms of L.A. Care's McKesson agreement by the indemnifying party. L.A. Care's agreement with McKesson also recognizes the Department as a third party beneficiary with the right to enforce its terms against McKesson.

The term of the indemnification agreement will be consistent with the term of L.A. Care's agreement with McKesson, which is effective March 29, 2012 through March 28, 2013, and renews automatically for four-one year terms unless either party provides prior written notice of termination to the other party.

The Agreement may be terminated by either party upon thirty (30) days prior written notice in the event the other party breaches a material term of the Agreement, and fails to cure such breach within such period.

L.A. Care and the Department has agreed to mutual indemnification of specific liabilities that may arise out of or result, in whole or in part, from either party's breach of the terms of the McKesson contract.

County Counsel has approved Exhibit I as to form, including the indemnification language in the Agreement.

**CONTRACTING PROCESS**

Not applicable.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of the recommendation will ensure that DHS provides medically necessary, appropriate, and cost-effective patient care to managed care enrollees and HWLA beneficiaries.

Respectfully submitted,

Mitchell H. Katz, M.D.

Director

MHK:ck

Enclosures

c: Chief Executive Office
Acting County Counsel
Executive Office, Board of Supervisors

**Indemnification Agreement**
**between**
**Los Angeles County Department of Health Services**
**and**
**Local Initiative Health Authority for Los Angeles County dba L.A. Care Health Plan**

This Indemnification Agreement ("**Agreement**") is made and entered into effective as of the second signature below ("Effective Date"), by and between the Local Initiative Health Authority for Los Angeles County, a local public agency d.b.a. L.A. Care Health Plan ("**L.A. Care**"), and the Los Angeles County Department of Health Services ("**County**") (each a "**Party**," or collectively the "**Parties**").

## Recitals

**Whereas**, L.A. Care agrees to enter into a license agreement and associated order forms (collectively, the "**Vendor Contract**") McKesson Health Solutions LLC ("**Vendor**") pursuant to which it will license various software applications ("**Software**") and obtain associated technical support and services ("**Software Services**");

**Whereas,** L.A. Care agrees to designate County as an Authorized User of the Software and Software Services;

**Whereas**, L.A. Care agrees to designate County as a third party beneficiary to the Vendor Contract with all rights available to L.A. Care; and

**Whereas**, L.A. Care is authorized to enter into this Agreement pursuant to Section 14087.9605 of the Welfare and Institutions Code.

**Now therefore**, for good and valuable consideration, the Parties hereto agree as follows:

## 1. Services

L.A. Care will enter into the Vendor Contract to obtain Software and Software Services as more fully described in Exhibit A, Order Form 19544. County acknowledges and agrees that L.A. Care's obligations under the Vendor Contract are limited to those responsibilities set forth below, and that County is responsible for complying with the terms of the Vendor Contract, attached at Exhibit B, McKesson Health Solutions Master Agreement 15252.

1.1 County responsibilities

(a) County has sole responsibility to determine its business requirements and to select the vendor.

(b) County and L.A. Care will negotiate the business terms with Vendor, to include technical and pricing requirements, and provide the negotiated terms to L.A. Care to incorporate into the Vendor Contract.

(c) County will review the final Vendor Contract prior to execution to ensure that business terms included in the Vendor Contract are correct.

(d) County, as a third-party beneficiary to the Vendor Contract, will comply with the terms and conditions of the Vendor Contract, including, but not limited to, the grant of any license, the responsibilities of a licensee or customer, etc.

(e) County will perform all project management responsibilities of the Vendor Contract. County will provide L.A. Care with monthly status reports, as needed upon determination of the County, identifying any issues or problems, deviations from the requirements or schedule, or other performance issues requiring contract changes.

(f) If a Business Associate Agreement will be required under the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), County will execute the Business Associate Agreement directly with Vendor.

(g) In the event of a dispute with Vendor arising out of or related to the Vendor Contract, County may take all appropriate action to enforce any right or remedy available to L.A. Care, including, but not limited to, rights under the warranty provisions of the Vendor Contract.

1.2 L.A. Care responsibilities

(a) L.A. Care will negotiate the terms and conditions of the Vendor Contract.

(b) Upon approval by County, L.A. Care will execute the final Vendor Contract; provided, however, County shall execute any Business Associate Agreement with the vendor.

(c) L.A. Care will pay Vendor invoices.

(d) L.A. Care will provide general contract administration of the Vendor Contract, to include making modifications or amendments to the Vendor Contract as requested by County.

(e) At all times, L.A. Care will include a provision in the Vendor Contract specifically providing that the County is a third party beneficiary to the Vendor Contract with the right to enforce its terms against Vendor.

## 2. Compliance with Laws.

Each Party shall comply with all laws, including all state, Federal or local statutes, ordinances, codes, rules, regulations, restrictions, orders, procedures, standards, directives, guidelines, policies or requirements enacted, adopted, promulgated, applied, followed or imposed by any governmental authority or court (collectively, "Laws") applicable to the operation of each Party's business, the performance of the Agreement and any other activities being performed by either Party in respect of the Agreement. Without limiting the generality of the foregoing,

Any provisions now or hereafter required to be included in the Agreement by such Laws or by Governmental Authorities exercising jurisdiction over County, the Services or L.A. Care's operations shall be binding upon and enforceable against the County and L.A. Care, whether or not expressly provided in the Agreement.

## 3. Representations and Warranties of L.A. Care

L.A. Care represents, warrants and covenants to County that:

(a) It is authorized to enter into this Agreement pursuant to Section 14087.9605 of the Welfare and Institutions Code, as well as applicable L.A. Care by-laws, policies and procedures.

(b) The Agreement will be executed by a duly authorized representative of L.A. Care and, when so executed, shall constitute the valid and binding obligations and agreements of L.A. Care, enforceable against L.A. Care, in accordance with all of the terms comprising the Agreement.

## 4. Representations and Warranties of County

County represents, warrants and covenants to L.A. Care that:

(a) County has the full power and authority to enter into this Agreement and to comply with all terms and satisfy all conditions set forth in the Agreement

(b) the Agreement will be executed by a duly authorized representative of County and, when so executed, shall constitute the valid and binding obligations and agreements of County, enforceable against County, in accordance with all of the terms comprising the Agreement.

**5. Confidentiality**

(a) During the term of this Agreement, either Party may have access to confidential material or information ("**Proprietary Information**") belonging to the other Party. "Proprietary Information" shall mean Software and Vendor and its related computer programs and codes, business plans, customer/member lists and information, financial records, partnership arrangements and licensing plans or that is marked confidential or that due to its character and nature, a reasonable person under like circumstances would treat as confidential. Proprietary Information will be used only for the purposes of this Agreement and related internal administrative purposes. Each Party agrees to protect the other's Proprietary Information at all times and in the same manner as each protects the confidentiality of its own proprietary and confidential materials, but in no event with less than a reasonable standard of care.

(b) Proprietary Information does not include information which: (i) is already known to the other Party at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of the receiving Party; (iii) is independently developed without use or benefit of the other's Proprietary Information; (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality; or (v) is a public record, not exempt from disclosure pursuant to California Public Records Act, Government Code Section 6250 *et seq.*, applicable provisions of California Welfare and Institutions Code or other State or Federal laws.

(c) Disclosure of Proprietary Information will be restricted to the receiving Party's employees, vendors or agents on a "need to know" basis in connection with the Agreement, who are bound by confidentiality obligations no less stringent than these prior to any disclosure. The receiving Party may disclose Proprietary Information pursuant to legal, judicial, or administrative proceeding or otherwise as required by law; provided that the receiving Party shall give reasonable prior notice, if not prohibited by applicable law, to the disclosing Party and shall assist the disclosing Party, at the disclosing Party's expense, to obtain protective or other appropriate confidentiality orders, and further provided that a required disclosure of Proprietary Information to an agency or Court does not relieve the receiving Party of its confidentiality obligations with respect to any other party.

(d) These confidentiality restrictions and obligations will terminate three (3) years after the expiration or termination of the Agreement. Upon written request of the disclosing Party, the receiving Party shall promptly return to the disclosing Party all documents, notes and other tangible materials representing the disclosing Party's Proprietary Information and all copies thereof. This obligation to return materials or copies thereof does not extend to automatically generated computer back-up or archival copies generated in the ordinary course of the receiving Party's information systems procedures, provided that the receiving Party shall make no further use of such copies.

(e) Proprietary Information does not include Protected Health Information or individually identifiable information, as defined by HIPAA and other privacy statutes or regulations. County shall not furnish, nor shall L.A. Care require access to any Protected Health Information. The access, use and disclosure of Protected Health Information under the Vendor Contract shall be governed by the Business Associate Agreement between County and the vendors.

## 6. Term and Termination of Agreement

6.1 Term and Duration.

The term of this Agreement shall be concurrent with the term of the Vendor Contract. To the extent terms of the Vendor Contract survive its termination or expiration, the obligations of the Parties under this Agreement shall survive.

6.2 Termination for Breach.

Either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party in the event the other Party breaches a material term of this Agreement, and fails to cure such breach within such period. Upon termination, L.A. Care shall assign the Vendor Contract to County and shall have no further obligations to pay vendor invoices under the Vendor Contract as of the effective date of termination.

## 7. Indemnification

7.1 County Indemnification Obligations

(a) County agrees to indemnify, defend and hold harmless L.A. Care, its Board of Governors, officers, officials, agents and employees against all claims, liabilities, losses, expenses, suits, actions and causes of actions (including reasonable attorneys' fees and legal expenses), fines, penalties, taxes or damages (collectively, the "**Liabilities**") where such Liabilities arise out of or result, in whole or in part, from County's breach of the terms of the Vendor Contract.

(b) L.A. Care shall promptly notify County of any third party claim related to the Vendor Contract and/or services provided thereunder." At L.A. Care's discretion, County shall either provide or arrange for legal representation on L.A. Care's behalf or L.A. Care shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from County for such representation, in addition to any and all other relief to which L.A. Care may be entitled.

7.2 L.A. Care Indemnification Obligations

(a) L.A. Care agrees to indemnify, defend and hold harmless County, its Board of Supervisors, officers, officials, deputies, agents and employees against all Liabilities where such Liabilities arise out of or result, in whole or in part, from L.A. Care's breach of the terms of this Agreement or its obligations under the Vendor Contract.

(b) County shall promptly notify L.A. Care of any third party claim related to the Vendor Contract and/or services provided thereunder." At L.A. Care's discretion, L.A. Care shall either provide or arrange for legal representation on County' behalf or County shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from L.A. Care for such representation, in addition to any and all other relief to which County may be entitled.

(c) The provisions of this Section 7 shall survive the termination or expiration of this Agreement.

## 8. General Terms

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.

(b) Administration. The Chief Executive Officer or his duly authorized designee shall have the authority to administer this Agreement on behalf of L.A. Care and to act as its duly authorized signatory.

(c) Excusable Delay. Neither Party will be liable for any delays resulting from circumstances beyond its reasonable control. In the event of any force majeure event, Vendor shall promptly notify L.A. Care of the event that may cause a delay and take all reasonable actions to mitigate the impact of the delay. In no event will a force majeure event excuse delays in performance not directly attributable to the event.

(d) Independent Contractor. .The Parties and their respective personnel are and shall continue to be independent contractors with respect to each other. L.A. Care shall not, by virtue of this Agreement, become, and under no circumstances shall be construed as being an employee, agent, joint venture or partner of County.

(e) Notices. Any notices required or permitted to be given hereunder by any party to the other shall be in writing and shall be deemed delivered upon personal delivery; twenty-four (24) hours following deposit with a courier for overnight delivery; or seventy-two (72) hours following deposit in the U.S. Mail, registered or certified mail, postage prepaid, return-receipt requested, addressed to the parties at the following addresses or to such other addresses as the parties may specify in writing:

| | |
|---|---|
| To L.A. Care: | L.A. Care Health Plan<br>1055 West Seventh Street, 10th Floor<br>Los Angeles, California 90017<br>Attention: John Wallace, Chief Operating Officer |
| To County: | Department of Health Services, Los Angeles County<br>313 N. Figueroa Street, 6th Floor East<br>Los Angeles, California 90012<br>Attention: Kathy Hanks, Director, Contract Administration & Monitoring |

(f) Nonassignability. Neither party may assign this Agreement or any interest therein without the prior written approval of the other party and any attempt to do so shall be void and of no force or effect for any purpose whatsoever and shall constitute a material breach of this Agreement.

(g) Severability. In the event that any term or provision of this Agreement shall be held to be invalid, void or unenforceable, then the remainder of this Agreement shall not be affected, impaired or invalidated, and each such term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) Waiver. The waiver by either Party of a breach or compliance with any provision of this Agreement shall not operate nor be construed as a waiver of any subsequent breach or compliance.

(i) Headings. The section headings used in this Agreement are for convenience and reference purposes only and shall not enter into the interpretation of this Agreement.

(j) Integration. This Agreement, with its exhibits and attachments, constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by each of the Parties.

(k) Counterparts. This Agreement may be executed in one or more counterparts by the Parties. All counterparts shall be construed together and shall constitute one agreement.

*[SIGNATURE PAGE FOLLOWS]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be subscribed as of the Effective Date.

| | |
|---|---|
| **Local Initiative Health Authority for Los Angeles County, dba L.A. Care Health Plan ("L.A. Care")** | **Department of Health Services Los Angeles County ("County")** |
| By: _____ | By: _____ |
| Name: Howard A. Kahn | Name: |
| Title: Chief Executive Officer | Title: |
| Date: _____ | Date: _____ |

**Exhibit A**
**Order Form 19544**
**Software and Software Services**

See attached.

**Exhibit B**
**McKesson Health Solutions Master Agreement 15252**

See attached.

McKESSON
Empowering Healthcare

## MCKESSON HEALTH SOLUTIONS MASTER AGREEMENT

MCKESSON HEALTH SOLUTIONS MASTER AGREEMENT (**"MA"**) binding as of the latest date in the signature block below (the **"Effective Date"**), between McKesson Health Solutions LLC (**"McKesson"**), and the customer identified below (**"Customer"**), consisting of the MA Terms and Conditions Order Forms, and Exhibits. This MA governs all Products and Services supplied by McKesson to Customer in the U.S., as more fully described below, during the Term.

The term of this MA (**"Term"**) commences on the Effective Date and continues until termination or expiration of each Order Form executed hereunder, unless earlier terminated as set forth herein.

This MA is executed by an authorized representative of each party.

**LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY, A LOCAL PUBLIC AGENCY D.B.A L.A. CARE HEALTH PLAN**

By: _____
Name: H Kuh
Title: CEO
Date: 29 March 12

Customer Address:
1055 W. 7th Street
10th Floor
Los Angeles, CA 90017

**MCKESSON HEALTH SOLUTIONS LLC**

By: _____
Name: PAUL ANTONELLIS
Title: DIRECTOR, SALES & ACCOUNT MGMT
Date: 3-28-2012

McKesson Address:
5995 Windward Parkway
Alpharetta, Georgia 30005
Attn: General Counsel

With a copy to:

McKesson Health Solutions LLC
5 Country View Road
Malvern, PA 19355
Attn: Vice President of Product Operations

| | |
|---|---|
| **Customer Number** | **LAC502** |
| **Contract Number** | **15252** |

## MA TERMS AND CONDITIONS

### SECTION 1: DEFINITIONS

1.1 Defined Terms. Capitalized terms in this MA or an Order Form have the meanings set forth below or in Exhibit A.

### SECTION 2: ORDERING PROCESS

2.1 Scope. This MA shall apply to orders by Customer on behalf of the Department of Health Services, Los Angeles County (**"DHS"**), and no other orders.

2.2 Order Forms. Order Forms will be used to process Customer's license and purchase Products and Services.

### SECTION 3: PRODUCTS AND SERVICES

3.1 Software and Clinical Content.

3.1.1 Software License. Subject to the terms of this MA, McKesson grants to Customer, and Customer accepts, a limited, nonexclusive, nontransferable, non-sublicensable license to use the Software and Clinical Content identified on an Order Form for Customer's internal purposes for the license term specified in the Order Form (the **"Term"**). The Term will renew automatically as set forth in the Order Form unless otherwise set forth herein or in the Order Form and the license fee payable during any such renewal period will be at the Prevailing Rate or such rate as negotiated by the parties. The license grant is expressly subject to the following conditions: (i) the Software may be installed only on equipment located at the Facility(ies) or Data Center(s) or on Portable Device(s), (ii) the Software and Clinical Content may be accessed or used only by Permitted Users in the U.S., (iii) use of the Software and Clinical Content may be limited by Facility(ies), Data Center(s) or by any usage-based variable(s) specified in an Order Form, (iv) the Software and Clinical Content may be used to provide service bureau or other similar services only if expressly permitted in an Order Form, and (v) the Third Party Software is subject to any additional terms set forth in an Order Form. Customer may copy the Software and Clinical Content as reasonably necessary to exercise its license rights under this Section 3.1, including a reasonable number of copies for testing and backup purposes.

3.1.2 ASP Software License. For any Software identified on an Order Form as "ASP Software, subject to the terms of this MA, McKesson grants to Customer, and Customer accepts, a limited, non-exclusive, non-transferable, non-sublicensable, except as may be provided in an Order Form, license to use the object code version of the ASP Software in accordance with the Documentation herein for the ASP Term and any Renewal ASP Term (as defined below) solely for the benefit of Permitted Users. Subject to the terms of this MA, McKesson grants to Customer, and Customer accepts, a limited, non-exclusive, non-transferable, non-sublicensable, except as may be provided in an Order Form, license to install, operate and use the object code version of the Site Software, if any, solely in order to enable Customer to receive and use the ASP Services, on Customer's equipment that meets the minimum requirements identified by McKesson. The initial term of (and any renewal term) the ASP Services will be for the number of years set forth in the Order Form (the **"Initial ASP Term"**). Following the expiration of the Initial ASP Term, subject to Customer's continued payment of applicable fees, McKesson will continue to provide Customer with ASP Services for successive, automatically renewable one year periods (each a **"Renewal ASP Term"**), unless either party provides the other party with written notice of termination no less than six months prior to the end of the Initial ASP Term or a Renewal ASP Term.

3.1.3 Software Warranties.

(a) Warranty. McKesson warrants that (i) McKesson Software will perform in all material respects in accordance with the functional specifications set forth in the Documentation, (ii) the McKesson Software will operate together with the versions of the applicable Third Party Software specified in the Order Form, and such operation will include the integration features described in the

Documentation, and (iii) McKesson has the authority to license or sublicense the Software. These warranties will not apply: (1) if Customer operates the Software on equipment other than equipment that McKesson specifies in the Documentation, (2) if anyone other than McKesson or its authorized Third Party Vendor modifies the Software, (3) if Customer uses a version of the Software other than one of the two most current releases; or (4) during any period of time Customer has discontinued Software Maintenance Services or is past due on any undisputed license, Software Maintenance Services or Implementation Services fees.

(b) Testing. Customer may test the Software or System to ensure that it performs in all material respects in accordance with the functional specifications set forth in the Documentation. Such testing will begin on the Software or System delivery date and end 30 days after the Software Installation Date or System Installation Date, as applicable (the **"Testing Period"**), unless, prior to the expiration of the Testing Period, Customer provides McKesson with a reasonably detailed written report identifying a material and reproducible nonconformity of the Software or System with its functional specifications as set forth in the Documentation. In such event, the Testing Period will continue until McKesson corrects all such nonconformities identified in the error report to the extent necessary for the Software or System to perform in all material respects in accordance with the functional specifications set forth in the Documentation.

(c) No Viruses. McKesson warrants that the Software, as delivered, does not include any viruses or malicious code.

(d) Obstructions. McKesson warrants that the Software and/or Clinical Content, as delivered, does not contain malicious code, virus, worm, trap door, or other limiting design, instruction, self-replicating coded instructions, or routine intended to disrupt the normal operation of the Software ("Disabling Code") that would erase data or programming or otherwise cause the Software, Third-Party Software, operating system software, to become inoperable or incapable of being used in accordance with the Documentation or which could, without Customer's intervention, damage, destroy, disable, suspend operation of, or alter all or any part of the Software and/or Clinical Content, or in any manner reveal, destroy, or alter any data or other information accessed through or processed by the Software and/or Clinical Content, or provide transactions through the interfaces with the intent to inhibit use of non-McKesson systems. McKesson shall not include such Disabling Code in any subsequently provided Software and/or Clinical Content, enhancements, updates, upgrades, new releases, new versions and/or additions. McKesson shall use reasonable efforts to allow the Software and/or Clinical Content to work compatibly with commercially available virus protection program(s). McKesson will exercise due care in accordance with industry standards in engineering the Software and/or Clinical Content to prevent unauthorized penetration of or access to the data produced or utilized by the Software and/or Clinical Content. In the event of a breach of the warranties in this Section 3.1(c)(iv), McKesson will, at no charge to Customer, remove such Disabling Code and repair any damage caused thereby at the request of Customer; provided that if such Disabling Code did not occur through a breach of the warranties in this Section 3.1(c)(iv) or otherwise through fault of McKesson, then McKesson may invoice Customer for such services at McKesson's then-current rates.

(e) Third Party Software. Third Party Software is subject to, and Customer agrees to be bound by, the Third Party Terms. Third Party Software is licensed for use only in connection with the related McKesson Software. McKesson may substitute different Software for any Third Party Software licensed to Customer, if McKesson reasonably demonstrates the need to do so.

3.1.4 Software License Restrictions.

(a) Copying and Modification. Customer will not copy or modify the Software except as expressly permitted in this MA. Customer will not alter any trademark, copyright notice, or other proprietary notice on the Software or Documentation, and will duplicate each such trademark or notice on each copy of the Software and Documentation.

(b) Facility Limitation. The Software will be installed only at the Facility(ies) or Data Center(s), except that the Software may be installed on a temporary basis at an alternate location in the

U.S. if Customer is unable to use the Software at such Facility(ies) or Data Center(s) due to equipment malfunction or Force Majeure Event. Customer will promptly notify McKesson of the alternate location if such temporary use continues for longer than 30 days.

(c) Government Customer Rights. If this MA is performed under a federal government contract, then McKesson intends that any Products or Services provided under this MA constitute "commercial item(s)" as defined in Federal Acquisition Regulation (**"FAR"**) 2.101, including any Software, Clinical Content, Site Software, Third Party Software, Documentation or technical data. Additionally, all Software, Site Software, Third Party Software, Documentation, or technical data provided by McKesson under this MA will be considered related to such "commercial item(s)". If Customer seeks rights in Software, Site Software, Third Party Software, Documentation, or technical data provided by McKesson under this MA, then McKesson grants only those rights established under any FAR or FAR Supplement clauses which are flowed down to McKesson under this MA consistent with the delivery of "commercial item(s)". If Customer contends that any Software, Site Software, Third Party Software, Documentation, or technical data provided under this MA does not constitute "commercial item(s)" as defined in FAR 2.101, then Customer promptly will notify McKesson of the same, and identify what rights Customer contends exist in such Software, Site Software, Third Party Software, Documentation, or technical data. No rights in any such Software, Site Software, Third Party Software, Documentation, or technical data will attach other than rights related to "commercial item(s)" unless Customer provides such notice to McKesson, and McKesson expressly agrees in writing that such rights are granted under this MA.

3.1.5 Clinical Content.

(a) Copying of Clinical Content. Customer may copy the Clinical Content on an ad-hoc basis in the smallest increments or portions feasible under the circumstances or as legally required for disclosure: (a) to a Provider who has submitted a Claim to Customer for reimbursement and is questioning the rationale to support Customer's decisions and solely for use for Claim specific discussions with Customer; (b) to a Provider of health care service subject to Customer's medical necessity review and solely for use for case specific medical necessity discussions with Customer, as well as for payment determinations; (c) to a Provider in support of legislative and/or regulatory requirements for notification of material changes in payment policy and/or coding practices; (d) to a person included as one of Customer's Covered Lives under this MA or to such person's representative when the Clinical Content have been referenced in the process of denying, limiting, or discontinuing authorization of services for said person; (e) to a Provider for the sole purpose of marketing Customer's services; (f) to a public agency or independent review organization in connection with conducting an independent external review of or conducting an appeal of Customer's medical necessity and payment determination in a specific case when the Clinical Content have been referenced in the process of making said determination; (g) to a public agency to comply with a statutory or regulatory mandate requiring the Clinical Content be filed with said agency (copy to be furnished to McKesson as soon as practicable prior to any such disclosure so that McKesson may, at its option, object to or dispute same); and (h) pursuant to a judicial order or subpoena (copy to be furnished to McKesson at least 5 business days notice, unless otherwise prohibited, prior to any such disclosure so that McKesson may, at its option, object to or dispute same, or, if the scheduled time for such disclosure is less than 5 business days, then as soon as possible prior to such disclosure). In connection with each disclosure/distribution, all Clinical Content copies will prominently display on the cover page and/or introductory screen McKesson's trademark and copyright notices, as dictated by herein, and Customer will maintain and furnish the disclosure/distribution to McKesson upon request.

"McKesson's Statement of Disclosure: The Clinical Content you are receiving is confidential and proprietary information and is being provided to you solely as it pertains to the information requested. Under copyright law, the Clinical Content may not be copied, distributed, or otherwise reproduced. The Clinical Content may contain advanced clinical knowledge which we recommend you discuss with your physician upon disclosure to you.

The Clinical Content reflects clinical interpretations and analyses and cannot alone either (a) resolve medical ambiguities of particular situations; or (b) provide the sole basis for definitive

decisions. The Clinical Content is intended solely for use as screening guidelines with respect to medical appropriateness of healthcare services and not for final clinical or payment determinations concerning the type or level of medical care provided, or proposed to be provided, to a patient; all ultimate care decisions are strictly and solely the obligation and responsibility of your health care provider."

Should Customer only license Claims Performance Software, this paragraph shall not be applicable.

(b) Responsibility of Clinical Content. The authority and responsibility to determine whether to adopt any Clinical Content, how and when to apply Clinical Content, and the final determination with respect to such Clinical Content will rest entirely and solely with Customer.

(c) Transition of Clinical Content. The parties acknowledge and agree that McKesson currently provides the Clinical Content in a variety of formats. McKesson reserves the right to change the format and to provide such Clinical Content to Customer in a different medium at mutually agreed upon license fees.

(d) Historical Versions of Clinical Content. If Customer purchases Historical Versions of Clinical Content, Customer acknowledges and agrees that it shall (i) use the Historical Versions solely in the performance of retrospective reviews and (ii) use only the relevant Clinical Content for the applicable Clinical Content year the care was rendered. Customer further acknowledges and agrees that (i) McKesson shall have no further obligations whatsoever with regard to the Historical Versions, including, but not limited to, any obligation to deliver support services or provide maintenance or updates related to the Historical Versions, (ii) the Historical Versions are provided "as is" and any and all warranties relating to the Historical Versions have lapsed and become null and void, and (iii) any and all other obligations and/or liabilities of McKesson relating to the Historical Versions (including, without limitation, any indemnity obligations and any escrow obligations) have also lapsed and become null and void. For purposes of this Section, Historical Versions shall mean the Clinical Content that is no longer in production and is not one of the two most current versions.

3.2 Size Representation. Customer will furnish to McKesson a written report detailing the volume of Customer's usage-based variable as set forth in each applicable Order Form at least 60 days prior to each anniversary of the Order Form Effective Date, as of such date.

3.3 Services.

3.3.1 Software Maintenance Services. McKesson will provide Software Maintenance Services to Customer in accordance with the McKesson Support Manual. The fees for Software Maintenance Services are included in the license fees for the applicable Software.

3.3.2 Implementation Services. Implementation Services, if any, will be identified on the applicable Order Form, and are further described in, and will be performed by McKesson in accordance with, the McKesson Implementation Services and Training Guide. Customer acknowledges and agrees that Customer is responsible for, and the Implementation Services are conditioned upon, Customer's provision of the required Customer resources and performance of the Customer responsibilities as described in the McKesson Implementation Services and Training Guide. McKesson may change the Implementation Services and associated fees to reflect additional costs to McKesson caused by Customer's delay in complying with the foregoing implementation obligations or an incorrect implementation assumption set forth in an Order Form. Unless otherwise expressly set forth in an Order Form, Implementation Services associated with a specific Software product must be used within 18 months after the Order Form Effective Date. After such 18-month period, any unused Implementation Services will be deemed forfeited, and no refunds or credits will be due to Customer for any such forfeited Implementation Services. If Customer does not purchase Implementation Services for the relevant Products, Services and Facilities identified in an Order Form, then McKesson will have no obligation to implement such Products or Services at such Facility(ies) or Data Centers. McKesson will not grant any credits, refunds, or rights of exchange for Software or Services related to any Products or Services that are not implemented.

3.3.3 Professional Services. Any Professional Services to be provided by McKesson will be described on statements of work attached to an Order Form. Nothing will preclude or limit McKesson from providing Professional Services or developing software or materials for itself or other customers, irrespective of the possible similarity of screen formats, structure, organization and sequence to materials which may be delivered to Customer.

3.3.4 Scope Change. All changes in the scope of Services will be made in accordance with the Change Control Process. The **"Change Control Process"** is as follows: McKesson will prepare a written proposal for change(s) to the scope of any Services. If Customer agrees to such proposal, then the parties will execute a written amendment to the Order Form documenting such change(s). If Customer does not agree to such proposal, or the parties otherwise fail to execute the amendment, then such change(s) will not take effect.

3.3.5 Services Warranty. McKesson warrants that all Services will be performed in a professional manner consistent with industry standards by trained and skilled personnel.

3.3.6 Excluded Provider Warranty. McKesson warrants that neither it nor any of its employees assigned to perform material Services under this MA have been convicted of a criminal offense related to health care or been listed as debarred, excluded, or otherwise ineligible for participation in a federal health care program. McKesson will notify Customer if McKesson becomes aware that it or any of its employees assigned to perform material Services under this MA have been excluded or is otherwise ineligible for participation in a federal health care program.

3.3.7 Suspension of Services. McKesson reserves the right to suspend provision of any Services (a) 10 days after notice to Customer of nonpayment of undisputed sums owed to McKesson that are 30 days or more past due, where such breach remains uncured or (b) such suspension is necessary to comply with any applicable law or order of any governmental authority.

3.4 Customer Responsibilities. McKesson's provision of Services is dependent on Customer materially performing any Customer responsibilities identified in an Order Form to the MA, including but not limited to, providing mutually agreed-upon access to servers.

3.5 Customer Information. McKesson will configure the Products and provide the Implementation Services according to the information provided by Customer so that the Products included in the Order Form are sufficient for such included Software to perform in all material respects in accordance with the functional specifications set forth in the Documentation. If the information provided by Customer is incorrect, then Customer may need to purchase additional Products and Implementation Services to achieve full Software functionality.

3.6 Use of Products and Services. Customer will use all Products and Services in accordance with the Documentation and in compliance with applicable laws, ordinances, rules and regulations. This MA is subject to governmental laws, orders, and other restrictions regarding the export, import, re-export, or use (**"Control Laws"**) of the Products and Documentation, including technical data and related information (**"Regulated Materials"**). Customer agrees to comply with all Control Laws pertaining to the Regulated Materials in effect in, or which may be imposed from time to time by, the U.S. or any country into which any Regulated Materials are shipped, transferred, or released. Customer may permit use of the Products or Services by any outsourcing or facility management service provider only with McKesson's prior written consent.

3.7 Interface/Integration. Customer may not install any interface and/or integration to the Software without the prior written consent of McKesson, which consent shall not be unreasonably withheld.

3.8 Disclaimer; Exclusive Remedy. THE WARRANTIES IN THIS MA ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. MCKESSON DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL YIELD ANY PARTICULAR BUSINESS OR FINANCIAL

RESULT OR THAT THE SERVICES WILL BE PERFORMED WITHOUT ERROR OR INTERRUPTION. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR MCKESSON'S BREACH OF ANY WARRANTY WILL BE THE REPAIR, REPLACEMENT, OR RE-PERFORMANCE BY MCKESSON OF THE NONCONFORMING PRODUCT OR SERVICE. IF MCKESSON FAILS TO DELIVER THIS REMEDY, THEN CUSTOMER MAY PURSUE ANY OTHER REMEDY THAT IS OTHERWISE PERMITTED UNDER THIS MA.

3.9 Clinical Content Disclaimer. THE CLINICAL CONTENT (WITHOUT REGARD TO THE MEDIA IN WHICH IT IS EMBODIED OR EXPRESSED), IS PROVIDED ON AN **"AS-IS"** BASIS. With respect to a claim that the Clinical Content has proved materially defective in material or workmanship, Customer shall provide McKesson with prompt written notice of the claim and an explanation of the circumstances of any such claim. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF A MATERIAL DEFECT IN THE CLINICAL CONTENT IS EXPRESSLY LIMITED TO THE CORRECTION OF SUCH BY MCKESSON AT MCKESSON'S SOLE EXPENSE.

**SECTION 4: PAYMENT**

4.1 Invoicing Terms. Customer will pay all fees and other charges in U.S. dollars within 35 days after invoice date.

4.2 Expenses. Prices do not include packing, delivery, and insurance charges, or fees charged by third parties with respect to Processing Services, which will be separately invoiced and paid by Customer. Customer will reimburse McKesson for all other reasonable out-of-pocket expenses incurred in the course of providing Services, including travel and living expenses pursuant to the McKesson Travel Policy. Any travel for onsite services shall be estimated by McKesson. McKesson shall provide a written estimate of expenses which shall be approved in writing by Customer prior to McKesson incurring any of these expenses. McKesson shall not exceed the estimated expenses unless approved in writing in advance by Customer.

4.3 Taxes. All amounts payable under this MA are exclusive of sales, use, value-added, withholding, and other taxes and duties (except for taxes payable on McKesson's net income). Customer will promptly pay, and indemnify McKesson against, all such taxes and duties, unless Customer provides McKesson satisfactory evidence of an applicable tax exemption prior to the Order Form Effective Date.

4.4 Late Payments. McKesson may charge Customer interest on any undisputed overdue fees, charges, or expenses at a rate equal to the lesser of 1.0% per month or the highest rate permitted by law. Customer will reimburse McKesson for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any undisputed overdue amounts. If Customer does not pay undisputed fees, charges, or expenses when due, then McKesson may require reasonable advance payments as a condition to providing Products and Services.

4.5 Audit. Upon reasonable advance notice and no more than twice per year, McKesson may conduct an audit to ensure that Customer is in compliance with this MA. Such audit will be conducted during regular business hours, and Customer will provide McKesson with reasonable access to all relevant equipment and records. If an audit reveals that Customer's use of any Product or Service during the period being audited exceeds the number of Facility(ies), Data Center(s) transactions, or usage-based variables described in the Order Form, then McKesson may invoice Customer for all such excess use based on McKesson's Prevailing Rate(s) in effect at the time the audit is completed, and Customer will pay any such invoice. If such excess use exceeds twenty percent of the licensed use, then Customer will also pay McKesson's reasonable costs of conducting the audit.

**SECTION 5: GENERAL TERMS**

5.1 Confidentiality and Proprietary Rights.

5.1.1 Use and Disclosure of Confidential Information. Each party may disclose to the other party Confidential Information. Except as expressly permitted by this MA, neither party will: (a) disclose

the other party's Confidential Information except (i) to its employees or contractors who have a need to know and are bound by confidentiality terms no less restrictive than those contained in this Section 5.1; or (ii) to the extent required by law following prompt notice of such obligation to the other party; or (b) use the other party's Confidential Information for any purpose other than performing its obligations under this MA. Each party will use all reasonable care in handling and securing the other party's Confidential Information and will employ all security measures used for its own proprietary information of similar nature. Following the termination of this MA, each party will, upon written request, return or destroy all of the other party's tangible Confidential Information in its possession and will promptly certify in writing to the other party that it has done so.

5.1.2 Period of Confidentiality. The restrictions on use, disclosure and reproduction of Confidential Information set forth in this Section will, with respect to Confidential Information that constitutes a "trade secret" (as that term is defined under applicable law), be perpetual, and will, with respect to other Confidential Information, remain in full force and effect during the term of this MA and for three years following the termination of this MA.

5.1.3 Injunctive Relief. The parties agree that the breach, or threatened breach, of any provision of this Section 5.1 may cause irreparable harm without adequate remedy at law. Upon any such breach or threatened breach, a party will be entitled to injunctive relief to prevent the other party from commencing or continuing any action constituting such breach, without having to post a bond or other security and without having to prove the inadequacy of other available remedies. Nothing in this paragraph will limit any other remedy available to either party.

5.1.4 Retained Rights. Customer's rights in the Products and Services will be limited to those expressly granted in this MA. McKesson and its Third Party Vendors reserve all intellectual property rights not expressly granted to Customer. All changes, modifications, improvements or new modules made or developed with regard to the Products or Services, whether or not (a) made or developed at Customer's request, (b) made or developed in cooperation with Customer, or (c) made or developed by Customer, will be solely owned by McKesson or its Third Party Vendors. Customer acknowledges that the Products contain trade secrets of McKesson or its Third Party Vendors, and Customer agrees not to take any step to derive a source code equivalent of the Software (e.g., disassemble, decompile, or reverse engineer the Software) or to permit any third party to do so. McKesson retains title to all material, originated or prepared for the Customer under this MA. Customer is granted a license to use such materials in accordance with this MA.

5.1.5 Security of Software or Clinical Content. Customer agrees to use commercially reasonable security measures to prevent unauthorized access to the Software and/or Clinical Content. Customer agrees to be responsible for any breach of the MA or any other unauthorized dissemination of the Software and/or Clinical Content or the content contained therein by any user accessing the Software and/or Clinical Content via Customer's Website.

5.1.6 Protected Health Information. Confidential Information does not include protected health information or individually identifiable information, as defined by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other privacy statutes or regulations. The access, use and disclosure of Protected Health Information shall be governed by the Business Associate Agreement attached hereto as Exhibit B.

5.2 Intellectual Property Infringement.

5.2.1 Duty to Defend. McKesson will defend, indemnify, and hold Customer harmless from any action or other proceeding brought against Customer to the extent that it is based on a claim that (a) the use of any McKesson Software (other than Third Party Software) delivered under this MA infringes any U.S. copyright or U.S. patent or (b) the McKesson Software (other than Third Party Software) incorporates any misappropriated trade secrets. McKesson will pay costs and damages finally awarded against Customer as a result thereof; provided, that Customer (i) notifies McKesson of the claim within ten business days, or as soon as practicable (ii) provides McKesson with all reasonably requested

cooperation, information and assistance at McKesson's expense, and (iii) gives McKesson sole authority to defend and settle the claim.

5.2.2 Exclusions. McKesson will have no obligations under Section 5.2.1 with respect to claims arising from: (a) McKesson Software modifications that were not performed by McKesson or authorized by McKesson in writing; (b) custom interfaces, file conversions, or other programming for which McKesson does not exclusively develop the specifications or instructions; (c) use of any McKesson Software in combination with products or services not provided by McKesson, except as provided in Section 3.1.3(a), if use of the McKesson Software alone or in conjunction with the Third Party Software or hardware specified in the Order Form would not result in liability under Section 5.2.1; or (d) any use of the McKesson Software not authorized by this MA, the Order Form, or the Documentation.

5.2.3 Infringement Remedies. If a claim of infringement or misappropriation for which Customer is entitled to be indemnified under Section 5.2.1 arises, McKesson may, at its sole option and expense: (a) obtain for Customer the right to continue using such McKesson Software; (b) replace or modify such McKesson Software to avoid such a claim, provided that the replaced or modified McKesson Software is substantially equivalent in function to the affected McKesson Software and there is no material degradation in the services as a result of using the replaced or modified McKesson Software; or (c) take possession of the affected McKesson Software and terminate Customer's rights and McKesson's obligations under this MA with respect to such McKesson Software. Upon any such termination, McKesson will refund to Customer a prorated portion of the fees paid for that McKesson Software based upon a period of depreciation equal to the license period, with depreciation deemed to have commenced on the corresponding Software Installation Date, if any, or the corresponding date of delivery.

5.2.4 Exclusive Remedy. THE FOREGOING ARE MCKESSON'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT OR TRADE SECRET MISAPPROPRIATION.

5.3 Limitation of Liability.

5.3.1 Total Damages - McKesson. EXCEPT FOR MCKESSON'S INDEMNIFICATION OBLIGATIONS AND BREACH OF CONFIDENTIALITY OBLIGATIONS, MCKESSON'S TOTAL CUMULATIVE LIABILITY UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA WILL BE LIMITED TO (A) WITH RESPECT TO ANY PRODUCT, THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO MCKESSON UNDER THE APPLICABLE ORDER FORM FOR THE PRODUCT GIVING RISE TO THE CLAIM OR (B) WITH RESPECT TO ANY SERVICE, THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO MCKESSON UNDER THE APPLICABLE ORDER FORM FOR THE SERVICE GIVING RISE TO THE CLAIM, AS APPLICABLE, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE.

5.3.2 Total Damages – Customer. EXCEPT FOR BREACH OF CONFIDENTIALITY OBLIGATIONS, CUSTOMER'S PAYMENT OBLIGATIONS OR LIABILITY ARISING FROM THIRD PARTY SOFTWARE INTELLECTUAL PROPERTY INFRINGEMENT, CUSTOMER'S TOTAL CUMULATIVE LIABILITY UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA WILL BE LIMITED TO (A) WITH RESPECT TO ANY PRODUCT, THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO MCKESSON UNDER THE APPLICABLE ORDER FORM FOR THE PRODUCT GIVING RISE TO THE CLAIM OR (B) WITH RESPECT TO ANY SERVICE, THE TOTAL FEES PAID (LESS ANY REFUNDS OR CREDITS) BY CUSTOMER TO MCKESSON UNDER THE APPLICABLE ORDER FORM FOR THE SERVICE GIVING RISE TO THE CLAIM , WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE.

5.3.3 Exclusion of Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER, IN CONNECTION WITH, OR RELATED TO THIS MA FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOSS OF GOODWILL, WHETHER BASED ON BREACH OF CONTRACT,

WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT MCKESSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

5.3.4 Material Consideration. THE PARTIES ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS ARE A MATERIAL CONDITION FOR THEIR ENTRY INTO THIS MA.

5.4 Indemnification. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY CLINICAL CONTENT FURNISHED BY MCKESSON HEREUNDER (WHETHER SEPARATELY OR INCLUDED WITHIN A PRODUCT) IS AN INFORMATION MANAGEMENT AND DIAGNOSTIC TOOL ONLY AND THAT ITS USE CONTEMPLATES AND REQUIRES THE INVOLVEMENT OF TRAINED INDIVIDUALS. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT MCKESSON HAS NOT REPRESENTED ITS PRODUCTS AS HAVING THE ABILITY TO DIAGNOSE DISEASE, PRESCRIBE TREATMENT, OR PERFORM ANY OTHER TASKS THAT CONSTITUTE THE PRACTICE OF MEDICINE. The parties understand that all ultimate care and payment decisions are strictly and solely the obligation and responsibility of Customer and its providers and reviewers with McKesson having no right or standing to direct or control their uses of the Software and/or Clinical Content. Accordingly, Customer agrees to and hereby does indemnify, defend and hold McKesson harmless from and against all claims, suits, losses, demands, damages or expenses (including reasonable attorneys' fees, court costs and expert witness fees and expenses) arising out of Customer's use of or inability to use, the Clinical Content or the Software (or the use of or inability to use the Clinical Content or the Software by any person receiving the Clinical Content or the Software by or through Customer) provided, however, that McKesson (a) promptly notifies Customer in writing by certified mail of such claim, suit or proceeding; (b) gives Customer the right to control and direct investigation, preparation, defense and settlement of any claim, suit or proceeding; and (c) gives assistance and full cooperation for the defense of same. Customer will not be obliged to pay damages (and costs, if any) to such third party until all appeals to courts of competent jurisdiction have been exhausted or the time for making such appeals has passed without an appeal being taken. Customer will not be liable for amounts payable in connection with any settlement or compromise entered into by McKesson without Customer's prior written authorization.

5.5 Internet Disclaimer. CERTAIN PRODUCTS AND SERVICES PROVIDED BY MCKESSON UTILIZE THE INTERNET. MCKESSON DOES NOT WARRANT THAT SUCH SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. MCKESSON DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM MCKESSON'S OR CUSTOMER'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ACCORDINGLY, MCKESSON DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO THE ABOVE EVENTS.

5.6 Termination.

5.6.1 Termination. A party may terminate the MA or any Order Form issued under this MA immediately upon notice to the other party if the other party: (a) materially breaches the MA or such Order Form and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within 60 days after receiving notice of the breach from the terminating party; (b) infringes the terminating party's intellectual property rights and fails to remedy, or fails to commence reasonable efforts to remedy, such breach within ten days after receiving notice of the breach from the terminating party; (c) materially breaches the MA or such Order Form in a manner that cannot be remedied; or (d) commences dissolution proceedings or ceases to operate in the ordinary course of business. Termination of the MA or any Order Form will not affect the parties' rights and obligations under any other Order Forms executed by the parties prior to such termination or expiration, and all such other Order Forms will remain in full force and effect, unless and until terminated in accordance with these terms.

5.6.2 Obligations upon Termination or Expiration. Upon the termination or expiration of this MA or an Order Form, Customer will promptly (a) cease using all Software and Clinical Content, (b) purge all Software and Clinical Content from all computer systems (including servers and personal computers), (c) return to McKesson or destroy all copies (including partial copies) of the Software and Clinical

Content, and (d) deliver to McKesson written certification of an officer of Customer that Customer has complied with its obligations under this Section. Notwithstanding the above, one hardcopy of the InterQual Clinical Content may be retained in Customer's compliance office for archiving purposes only, provided that the MA or Order Form has not been terminated for Customer's default.

5.6.3 Survival of Provisions. Those provisions of this MA that, by their nature, are intended to survive termination or expiration of this MA will remain in full force and effect, including, without limitation, the following Sections of this MA: 4 (Payment), 5.1 (Confidentiality and Proprietary Rights), 5.2 (Intellectual Property Infringement), 5.3 (Limitation of Liability), 5.6.2 (Obligations upon Termination), 5.6.3 (Survival of Provisions), 5.7 (Books and Records), 5.9 (Discount Recording) and 5.11 - 5.26 (Governing Law – Entire Agreement).

5.7 Books and Records. If required by Section 952 of the Omnibus Reconciliation Act of 1980, 42 U.S.C. Section 1395x(l)(i)(ii), for a period of four years after the Services are furnished, the parties agree to make available, upon the written request of the Secretary of Health and Human Services, the Comptroller General, or their representatives, this MA and such books, documents, and records as may be necessary to verify the nature and extent of the Services with a value or cost of $10,000 or more over a 12 month period.

5.8 Business Associate. The parties agree to the obligations set forth on Exhibit B. Said Business Associate Agreement was incorporated as an Amendment dated February 1, 2011, to a previously executed Agreement between McKesson and County of Los Angeles dated as of November 27, 2007. Any reference to Customer or Covered Entity in said Business Associate Agreement shall be deemed to be the Customer indicated herein. Any reference to Nurse Advice Line and Disease/Care Management Services Agreement shall be deemed to be Agreement herein.

5.9 Discount Reporting. The transaction covered by an Order Form may involve a discount, rebate or other price reduction on the items covered by the Order Form. Customer may have an obligation to report such price reduction or the net costs in its cost reports or in another appropriate manner in order to meet the requirements of applicable federal and state anti-kickback laws, including 42 U.S.C. Sec. 1320a-7b (b) (3) (A) and the regulations found at 42 C.F.R. Sec. 1001.952(h). Customer will be responsible for reporting, disclosing, and maintaining appropriate records with respect to such price reduction or net cost and making those records available under Medicare, Medicaid or other applicable government health care programs.

5.10 Disposition of Existing Agreements. Any and all existing agreements between Customer and McKesson (**"Existing Agreements"**) will continue in full force and effect in accordance with their terms. The Existing Agreements will not apply to any Products or Services acquired by Customer on or after the Effective Date, all of which will be governed by this MA, except as otherwise agreed by the parties.

5.11 Governing Law. This MA is governed by and will be construed in accordance with the laws of the State of California, exclusive of its rules governing choice of law and conflict of laws and any version of the Uniform Commercial Code. Each party agrees that exclusive venue for all actions, relating in any manner to this MA will be in a federal or state court of competent jurisdiction located in Los Angeles County, California.

5.12 Disputes. In so much as required by California State Law, the following will apply. Pursuant to Government Code Section 930.2, filing of a claim under the California Government Claims Act is a prerequisite to initiating proceedings pursuant to this Section. Any such claim shall be presented and acted upon within the time limitations and in the manner prescribed by Chapter 2, commencing with Section 910 of Part 3 (Claims Against Public Entities) of Division 3.6 of Title 1 of the California Government Claims Act.

5.13 Assignment and Subcontracts. Customer will not assign this MA without the prior written consent of McKesson, which will not be unreasonably withheld. McKesson may, upon notice to Customer, assign this MA to any affiliate or to any entity resulting from the transfer of all or substantially all of McKesson's assets or capital stock or from any other corporate reorganization. McKesson may subcontract its

obligations under this MA, provided McKesson remains responsible for the actions of such subcontractors. Additionally, subcontractors shall be subject to the obligations contained in Section 5.1 and the Business Associate Agreement.

5.14 Severability. If any part of a provision of this MA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this MA will not be affected.

5.15 Notices. All notices relating to the parties' legal rights and remedies under this MA will be provided in writing and will reference this MA. Such notices will be deemed given if sent by: (a) postage prepaid registered or certified U.S. Post mail, then five working days after sending; or (b) commercial courier, then at the time of receipt confirmed by the recipient to the courier on delivery. All notices to a party will be sent to its address set forth on the cover page hereto, or to such other address as may be designated by that party by notice to the sending party.

5.16 Waiver. Failure to exercise or enforce any right under this MA will not act as a waiver of such right.

5.17 Force Majeure. Except for the obligation to pay money, a party will not be liable to the other party for any failure or delay caused by a Force Majeure Event, whether or not such matters were foreseeable, and such failure or delay will not constitute a material breach of this MA.

5.18 Amendment. This MA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both parties. For avoidance of doubt, this MA may not be amended via electronic mail or other electronic messaging service.

5.19 No Third Party Beneficiaries. Except as specifically set forth below or in an Order Form, nothing in this MA will confer any right, remedy, or obligation upon anyone other than Customer and McKesson. DHS is hereby designated as a third party beneficiary to this MA with all rights available to Customer. As such, DHS shall have the right to enforce any right or remedy available to Customer, including, but not limited to, rights under the warranty provisions of the MA and any Order Form.

5.20 Relationship of Parties. Each party is an independent contractor of the other party. This MA will not be construed as constituting a relationship of employment, agency, partnership, joint venture or any other form of legal association. Neither party has any power to bind the other party or to assume or to create any obligation or responsibility on behalf of the other party or in the other party's name.

5.21 Non-solicitation of Employees. Neither party will directly or indirectly solicit for employment any employee of the other party during the term of the applicable Order Form and for a period of one year thereafter without the written consent of the other party. This prohibition will not apply if an employee answers a party's notice of a job listing or opening, advertisement or similar general publication of a job search or availability for employment.

5.22 Publicity. The parties may publicly announce that they have entered into this MA and describe their relationship in general terms, excluding financial terms. Neither party will make any other public announcement or press release regarding this MA or any activities performed hereunder without the prior written consent of the other party. McKesson shall not use any trade name, trademark, service mark, logo or slogan of Customer without Customer's prior written consent in each instance.

5.23 Acquisitions. If Customer acquires a health plan or health care facility (**"Acquired Entity"**) that entered into a license for Software, Clinical Content, or ASP Services (**"Pre-Existing Contract"**) prior to such acquisition, that Pre-Existing Contract will remain in effect until its termination. Upon the termination of the Pre-Existing Contract, or upon Customer's acquisition of an Acquired Entity that does not have a Pre-Existing Contract, Customer will pay McKesson for any additional usage-based variables specified in the applicable Order Form, including, but not limited to Covered Lives, Beds, Users, Seats, etc. (**"Usage-Based Variables"**), regardless of location, resulting from the acquisition of the Acquired Entity in accordance with this Order Form. Customer will disclose to McKesson the increase in the Usage-Based

Variables it gained through the Acquired Entity within 30 days after such acquisition. If the Acquired Entity will not use the Software, Clinical Content, and ASP Services, no additional license fees will be due.

5.24 Construction of Agreement. This MA will not be presumptively construed for or against either party. Section titles are for convenience only. As used in this MA, "will" means "shall," and "include" means "includes without limitation." The parties may execute this MA and each Order Form in one or more counterparts, each of which will be deemed an original and one and the same instrument.

5.25 Conflict Between Agreement and Order Form. In the event of any conflict or inconsistency in the interpretation of this MA (including all Order Forms executed hereunder), such conflict or inconsistency will be resolved by giving precedence according to the following order: (a) the Order Form; (b) the MA Terms and Conditions and Exhibits; (c) documents incorporated by reference.

5.26 Entire Agreement. This MA, including Exhibits and Order Forms, is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter. Terms and conditions on or attached to Customer purchase orders will be of no force or effect, even if acknowledged or accepted by McKesson.

**SECTION 6: CUSTOMER-SPECIFIC TERMS**

6.1 Authority. Customer is authorized to enter into this agreement pursuant to Section 14087.9605 of the Welfare and Institutions Code. The Chief Executive Officer or his duly authorized designee shall have the authority to administer this MA on behalf of Customer and to act as its duly authorized signatory.

6.2 Equal Employment Opportunity. McKesson is an equal employment opportunity employer. McKesson's employment decisions are based solely on merit and business needs and not on race, color, gender, age, sexual orientation, personal appearance, religion, creed, national origin or ancestry, citizenship, physical or mental disability, pregnancy, childbirth or related medical conditions, other medical conditions, genetic tests or characteristics, veteran or military status, marital or familial status, political affiliation, or any other factor protected by law. McKesson also makes reasonable accommodation, wherever necessary, for all employees or applicants with disabilities, as long as the individual is otherwise qualified to safely perform the essential duties of the job and provided that any accommodations made do not impose an undue hardship on McKesson.

6.3 Conflicts of Interest. McKesson shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. McKesson warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to Customer. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Agreement.

6.4 Insurance. McKesson shall maintain insurance in accordance with the insurance requirements set forth in Exhibit C, Insurance Requirements.

## EXHIBITS

The following Exhibits are incorporated into the terms of the MA:

| | |
|---|---|
| Exhibit A | Definitions |
| Exhibit B | Business Associate Agreement |
| Exhibit C | Insurance Requirements |

## EXHIBIT A

## DEFINITIONS

**"ASP"** means Application Service Provider.

**"ASP Services"** means the ASP Software and related McKesson hardware, Software Maintenance Services and Implementation Services.

**"ASP Software"** means any Software licensed to Customer for use remotely or via the internet by accessing the Software located on the McKesson or Third Party Vendor hardware, as indicated on the Order Form.

**"Beds"** means the number of hospital beds regularly maintained (set up and staffed for use) for inpatients by Customer or a Facility.

**"Claim"** means a request for payment or a reported encounter received by Customer from a Provider, or from a Covered Life seeking reimbursement for such services, comprised of any number of lines.

**"Clinical Content"** means medical or clinical information such as terminology, vocabularies, decision support rules, alerts, drug interaction knowledge, care pathway knowledge, standard ranges of normal or expected result values, and any other clinical content or rules provided to Customer under an Order Form, together with any related Documentation and Upgrades. Depending on the intended usage, Clinical Content may be provided in either paper or electronic formats. Examples of Clinical Content include the InterQual Clinical Decision Support Criteria, Clinical Evidence Summaries, InterQual SmartSheets, KnowledgePacks, McKesson Analytics Advisor™, and Medical Necessity Content. Clinical Content may be either (i) owned by McKesson, or (ii) Third Party Clinical Content.

**"Concurrent User"** means a Permitted User identified by a unique user ID issued by Customer that is one user out of a maximum number of users permitted to access the Software simultaneously.

**"Confidential Information"** means non-public information, including technical, marketing, financial, personnel, planning, and other information that is marked confidential or which the receiving party should reasonably know to be confidential, and will also include the terms of this MA. Confidential Information will not include: (a) information lawfully obtained or created by the receiving party independently of the disclosing party's Confidential Information without breach of any obligation of confidence, (b) information that enters the public domain without breach of any obligation of confidence or (c) Protected Health Information or PHI (as defined in the Business Associate Agreement), the protection of which will be governed by the Business Associate Agreement.

**"Covered Lives"** means a primary member, subscriber or eligible dependent covered under a health plan or member who is included under a delegated risk arrangement under an agreement with Customer.

**"Customer's Website"** means Customer's secured website, to which access is limited to Providers who present a unique identifier and a password that corroborates the binding between the Provider and the unique identifier.

**"Data Center"** means a data center facility located in the U.S. and operated by Customer, McKesson or an approved third party so identified in an Order Form.

**"Documentation"** means user guides or operating manuals, containing the functional specifications for the Products that McKesson provides to Customer, as may be reasonably modified from time to time by McKesson.

**"Enhancements"** means enhancements or new releases of the Software, Documentation, Clinical Content, or Services providing new or different functionality that are separately priced and marketed by McKesson.

**"Exhibits"** means any exhibit or attachment to this MA or an Order Form.

**"Facility"** means a healthcare facility or health plan located in the U.S. and operated by Customer or DHS that is identified in an Order Form. Customer acknowledges and agrees that notwithstanding Customer's Provider Identification Number or Tax Identification Number, each physical location shall constitute a separate Facility.

**"Force Majeure Event"** means any cause beyond the reasonable control of a party that could not, by reasonable diligence, be avoided, including acts of God, acts of war, terrorism, riots, embargoes, acts of civil or military authorities, denial of or delays in processing of export license applications, fire, floods, earthquakes, accidents or strikes.

**"Generally Available"** means available as a non-development product, licensed by McKesson in the general commercial marketplace.

**"Implementation Services"** means the implementation services, training and education listed in an Order Form to be performed by McKesson for Customer in accordance with the McKesson Implementation Services and Training Guide, which may include, but are not limited to, software loading, data conversion, software interface services, software testing assistance, , and services set-up.

**"Live Date"** means Software Installation Date.

**"McKesson Implementation Services and Training Guide"** means McKesson's written Implementation Services and training procedures for the applicable Product or Service as contained in the applicable implementation and training guide, incorporated herein by reference, as may be reasonably modified from time to time.

**"McKesson Support Manual"** means McKesson's written Software Maintenance Services procedures for the applicable Product or Service as contained in the applicable support manual, incorporated herein by reference, as may be reasonably modified from time to time.

**"McKesson Software"** means any McKesson-owned Software licensed to Customer under an Order Form.

**"Medical Necessity Content"** means McKesson-created decision support rules, including diagnosis and procedure code pairs developed by the Centers for Medicare and Medicaid Services and Medicare Administrative Contractors, related to Medicare payment eligibility for medical services, treatment procedures, and medical technologies, including medical necessity determination.

**"Order Form"** means McKesson's form addendum to this MA, duly executed by both parties, pursuant to which Customer may order specific Products or Services.

**"Order Form Effective Date"** means the effective date of an Order Form, as set forth therein.

**"Portable Devices"** means, with respect to Software that is licensed on a per device basis, the number of laptops, PDAs, handhelds or other similar portable devices for which the applicable Software is licensed, as indicated on an Order Form.

**"Permitted User"** means any individual, whether on-site or at a Facility or from a remote location, (a) Customer employee, (b) consultant or independent contractor who has need to use the Products or Services based upon a contractual relationship with Customer, or (c) DHS, including its employees, consultants or independent contractors, so long as (i) such consultants or independent contractors are not a McKesson competitor, (ii) Customer remains responsible for use of the Products or Services by DHS or such consultants or independent contractors, and (iii) such consultants or independent contractors are subject to confidentiality and use restrictions at least as strict as those contained in this MA, (c) physician with admitting privileges at a Facility, (d) employee of such physician, and (e) medical professional authorized to perform services at a Facility.

**"Prevailing Rate"** means the McKesson standard fee(s) in effect for the applicable Software, Clinical Content, or Services, on the date that the Software, Clinical Content, or Services are to be provided.

**"Productive Use"** means the date in which the Software is available to process live data for purposes of other than testing or evaluation.

**"Products"** means Software, Clinical Content and any other products that McKesson provides to Customer pursuant to an Order Form.

**"Professional Services"** means any consulting, programming or other professional services that McKesson provides to Customer pursuant to an Order Form.

**"Provider"** means (a) a healthcare professional who provides services to Customer's members, and (b) such authorized employees of such Provider who are acting on behalf of the Provider. For purposes of the McKesson's Transparency, Clear Orders™ and Clear Coverage™ only, the definition of Provider will not include hospitals, health centers or other treatment facilities. For purposes of Clear Orders™ only, the definition of Provider will include free-standing labs that conduct Exams, but will not include labs within hospitals, health centers or other treatment facilities.

**"Release"** means an updated version of the Software which contains Software changes and/or configuration change(s), as applicable.

**"Reviews"** means each individual determination of clinical appropriateness performance for a patient.

**"Seat"** means a unique physical device such as a personal computer, work station, or terminal utilized to access the Software, either directly or at the physical device on which the Software is located or the location of the entity that has a license to use the Clinical Content.

**"Services"** means Software Maintenance Services, Implementation Services, Professional Services, Processing Services, ASP Services, and any other services that McKesson provides to Customer under an Order Form.

**"Site Preparation Guide"** means McKesson's applicable written guide or written instructions as to the preparation of Customer's Facility or Data Center prior to installation and the maintenance of Customer's Facility or Data Center following installation.

**"Site Software"** means, the client portion of the Software (e.g., set-up executable) provided by McKesson to Customer, if any, for installation at Customer's site and required for Customer to access the ASP Services.

**"Software"** means software in object code form only (and related Documentation) identified in an Order Form or otherwise provided by McKesson to Customer, including any Upgrades that McKesson provides to Customer.

**"Software Installation Date"** means the earlier of (a) the date when the Software is first available for Productive Use, or (b) the date specified in the applicable implementation plan when the Software, is intended to be available for Productive Use, except that such date will be extended for each day that the Product or Service is not available for Productive Use due to direct fault of McKesson.

**"Software Maintenance Services"** means support services for only the two most current releases of the Software and Clinical Content consisting of telephone support, problem resolution, and Upgrades delivered by McKesson, all in accordance with the McKesson Support Manual. Software Maintenance Services do not include: (a) development of custom code or customizations for any Software, (b) support of Software modifications generated by anyone other than McKesson, (c) services to implement Upgrades (d) services to correct improper installation or integration of the Software that was not performed by McKesson-authorized personnel, (e) system administrator functions, (f) help desk services, and (g) Enhancements. Software Maintenance Services do not include services required as a result of

(i) improper use, abuse, accident or neglect, including Customer's failure to maintain appropriate environmental conditions for the Products, or (ii) modifications or additions to the Products.

**"Third Party Clinical Content"** means any Clinical Content that is owned by a third party and sublicensed to Customer under an Order Form.

**"Third Party Product"** means any Product identified in an Order Form as **"Third Party Product,"** which may contain Third Party Clinical Content and Third Party Software.

**"Third Party Software"** means any software that is owned by a third party and sublicensed to Customer under an Order Form.

**"Third Party Terms"** means any additional terms and conditions that are applicable to Third Party Software, including those referenced in or attached to an Order Form.

**"Third Party Vendor"** means a vendor other than McKesson from whom McKesson or Customer (with prior written consent from McKesson) obtains Third Party Product, Third Party Clinical Content or Third Party Software.

**"Upgrades"** means corrections, modifications, improvements, updates or releases of the Software, Documentation, Clinical Content, or Services designated by McKesson as **"Upgrades,"** which are Generally Available and generally provided to customers as part of Software Maintenance Services. Upgrades do not include Enhancements.

**BUSINESS ASSOCIATE AGREEMENT ("BAA")**

**EXHIBIT B**

Under this Nurse Advice Line and Disease/Care Management Services Agreement ("Agreement"), Contractor aka McKesson Health Solutions LLC ("Business Associate") provides services ("Services") to County of Los Angeles ("Covered Entity") and Business Associate receives, has access to or creates Protected Health Information or PHI (defined below) in order to provide those Services.

Covered Entity is subject to the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information ("Privacy Regulations") and the Health Insurance Reform: Security Standards ("the Security Regulations") at 45 Code of Federal Regulations (C.F.R.) Parts 160, 162 and 164 (together, the "Privacy and Security Regulations"). The Privacy and Security Regulations require Covered Entity to enter into this contract with Business Associate ("Business Associate Agreement" or "BAA") in order to mandate certain protections for the privacy and security of Protected Health Information, and those Regulations prohibit the disclosure to or use of Protected Health Information by Business Associate if such a contract is not in place.

Further, pursuant to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("HITECH Act"), effective February 17, 2010, certain provisions of the HIPAA Privacy and Security Regulations apply to Business Associates in the same manner as they apply to Covered Entity and such provisions must be incorporated into the Business Associate Agreement.

This Business Associate Agreement and the following provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Business Associate in compliance with HIPAA's Privacy and Security Regulations and the HITECH Act, as they now exist or may hereafter be amended.

Therefore, the parties agree as follows:

## DEFINITIONS

1.1 "Breach" has the same meaning as the term "breach" in 45 C.F.R. § 164.402.

1.2 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of

Protected Health Information outside Business Associate's internal operations or to persons other than its employees.

1.3 "Electronic Health Record" has the same meaning as the term "electronic health record" in the HITECH Act, 42 U.S.C. section 17921. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

1.4 "Electronic Media" has the same meaning as the term "electronic media" in 45 C.F.R. § 160.103. Electronic Media means (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

1.5 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103. Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.

1.6 "Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.7 "Minimum Necessary" refers to the minimum necessary standard in 45 C.F.R. § 162.502 (b) as in effect or as amended.

1.8 "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164, also referred to as the Privacy Regulations.

1.9 "Protected Health Information" has the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis

for believing that the information can be used to identify the Individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, or is created by Business Associate, or is made accessible to Business Associate by Covered Entity. "Protected Health Information" includes Electronic Protected Health Information.

1.10 "Required By Law" means a mandate contained in law that compels an entity to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or any administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing benefits.

1.11 "Security Incident" means the attempted or successful unauthorized access, Use, Disclosure, modification, or destruction of information in, or interference with system operations of, an Information System which contains Electronic Protected Health Information. However, Security Incident does not include attempts to access an Information System when those attempts are not reasonably considered by Business Associate to constitute an actual threat to the Information System.

1.12 "Security Rule" means the Security Standards for the Protection of Electronic Health Information also referred to as the Security Regulations at 45 Code of Federal Regulations (C.F.R.) Part 160, 162 and 164.

1.13 "Services" has the same meaning as in the body of this Agreement.

1.14 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402.

1.15 "Use" or "Uses" mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations.

1.16 Terms used, but not otherwise defined in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Regulations and HITECH Act.

## OBLIGATIONS OF BUSINESS ASSOCIATE

2.1 Permitted Uses and Disclosures of Protected Health Information. Business Associate:

(a) shall Use and Disclose Protected Health Information only as necessary to perform the Services, and as provided in Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 of this Agreement, or as otherwise permitted by this BAA or Required by Law;

(b) shall Disclose Protected Health Information to Covered Entity consistent with Section 2.8;

(c) may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

(i) Use Protected Health Information; and

(ii) Disclose Protected Health Information if the Disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this BAA), and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and.

(d) may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1); and

(e) may use PHI to provide Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B); and

(f) may create de-identified PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b),

Business Associate shall not Use or Disclose Protected Health Information for any other purpose or in any manner that would constitute a violation of the Privacy Regulations or the HITECH Act if so Used or Disclosed by Covered Entity.

2.2 Prohibited Uses and Disclosures of Protected Health Information. Business Associate:

(a) shall not Use or Disclose Protected Health Information for fundraising purposes and may use and disclose PHI for marketing purposes only as expressly directed by Covered Entity, and in accordance with 42 U.S.C. § 17936(a).

(b) shall not disclose Protected Health Information to a health plan for payment or health care operations purposes if the Individual has requested this special restriction and has paid out of pocket in full for the health care item or service to which the Protected Health Information solely relates.

(c) shall not directly or indirectly receive payment in exchange for Protected Health Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act. This prohibition shall not effect payment by Covered Entity to Business Associate. Covered Entity shall not provide such written consent except upon express approval of the departmental privacy officer and only to the extent permitted by law, including HIPAA and the HITECH Act.

2.3 Adequate Safeguards for Protected Health Information. Business Associate:

(a) shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information in any manner other than as permitted by this Business Associate Agreement. Business Associate agrees to limit the Use and Disclosure of Protected Health Information to the Minimum Necessary in accordance with the Privacy Regulation's minimum necessary standard as in effect or as amended.

(b) as to Electronic Protected Health Information, shall implement and maintain administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information; effective February 17, 2010, said safeguards shall be in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312, and shall comply with the Security Rule's policies and procedure and documentation requirements.

2.4 Reporting Non-Permitted Use or Disclosure and Security Incidents and Breaches of Unsecured Protected Health Information. Business Associate

(a) shall report to Covered Entity each Use or Disclosure of Protected Health Information that is made by Business Associate, its employees, representatives, agents, subcontractors, or other parties under Business Associate's control with access to Protected Health Information but which is not specifically permitted by this Business Associate Agreement or otherwise Required by Law.

(b) shall report to Covered Entity each Security Incident of which Business Associate becomes aware.

(c) shall notify Covered Entity of each Breach by Business Associate, its employees, representatives, agents or subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business

Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of the Business Associate as determined in accordance with the federal common law of agency. Notification under this section 2.4 shall be made by telephone call to (562) 940-3335.

2.4.1 Immediate Telephonic Report. Except as provided in Section 2.4.3, notification shall be made immediately upon discovery of the Breach of Unsecured Protected Health Information by telephone call to (562) 940-3335.

2.4.2 Written Report. Except as provided in Section 2.4.3, the initial telephonic notification shall be followed by written notification made without unreasonable delay and in no event later than three (3) business days from the date of discovery of the Breach of Unsecured PHI by the Business Associate to the Chief Privacy Officer at:

Chief Privacy Officer
Kenneth Hahn Hall of Administration
500 West Temple Street
Suite 525
Los Angeles, California 90012
HIPAA@auditor.lacounty.gov
(213) 974-2166

(a) The notification required by section 2.4 shall include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, Used, or Disclosed; and

(b) the notification required by section 2.4 shall include, to the extent possible, all information required to provide notification to the Individual under 45 C.F.R. 164.404(c), including:

(i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

(ii) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(iii) Any steps Business Associate believes that the Individual could take to protect him or herself from potential harm resulting from the Breach;

(iv) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against any further Breaches; and

(v) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

If Business Associate is not able to provide the information specified in section 2.4.2 (a) or (b) at the time of the notification required by section 2.4.2, Business Associate shall provide such information promptly thereafter as such information becomes available.

2.4.3 Request for Delay by Law Enforcement. Business Associate may delay the notification required by section 2.4 if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security. If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay notification, notice, or posting for the time period specified by the official; if the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay the notification, notice, or posting temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in paragraph (a) of this section is submitted during that time.

2.5 Mitigation of Harmful Effect. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement.

2.6 Breach Notification. In the event of a Breach caused solely by Business Associate and the Privacy and Security Regulations require notice to Individuals pursuant to 45 C.F.R. §§ 164.404 and 164.406 for such Breach, Business Associate will negotiate in good faith with Covered Entity the reimbursement for reasonable and substantiated costs for notifying Individuals or whether Business Associate will send or cause notifications to be sent to the Individuals. If the parties agree that Business Associate will send or cause notifications to be sent directly to affected Individuals, Business Associate will comply with the requirements pursuant to 45 C.F.R. §§ 164.404. Business Associate will provide Covered Entity with an advance copy of the proposed letter for review and approval prior to sending to the affected Individuals.

2.7 Availability of Internal Practices, Books and Records to Government Agencies. Business Associate agrees to make its internal practices, books and records relating

to the Use and Disclosure of Protected Health Information available to the Secretary of the federal Department of Health and Human Services for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations. Business Associate shall promptly notify Covered Entity of any requests made by the Secretary.

2.8 Access to Protected Health Information. Business Associate shall, to the extent Business Associate maintains Protected Health Information in a "designated record set" as defined by 45 C.F.R. § 164.501 for Covered Entity, make the Protected Health Information specified by Covered Entity available to Covered Entity as being entitled to access and copy that Protected Health Information pursuant to 45 C.F.R. § 164.524 and 42 U.S.C. § 17935(e)(1), as applicable; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity. Business Associate shall provide such access within ten (10) business days after receipt of a written request from Covered Entity. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act in accordance with 42 U.S.C. § 17935(e)(1).

2.9 Amendment of Protected Health Information. Business Associate shall, to the extent Business Associate maintains any Protected Health Information in a "designated record set" as defined by 45 C.F.R. § 164.501 for Covered Entity, make any amendments to Protected Health Information that are requested by Covered Entity in accordance with 45 CFR § 164.526. Business Associate shall make such amendment within ten (10) business days after receipt of a written request from Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.526.

2.10 Accounting of Disclosures. Upon Covered Entity's request, Business Associate shall provide to Covered Entity an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or subcontractors that would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and/or the HITECH Act which requires an Accounting of Disclosures of Protected Health Information, maintained in an Electronic Health Record, for treatment, payment, and health care operations.

Any accounting provided by Business Associate under this Section 2.10 shall include: (a) the date of the Disclosure; (b) the name, and address if known, of the entity or person who received the Protected Health Information; (c) a brief description of the Protected Health Information disclosed; and (d) a brief statement of the purpose of the Disclosure. For each Disclosure that could require an accounting under this Section 2.10, Business Associate shall document the

information specified in (a) through (d), above, and shall securely maintain the information for six (6) years from the date of the Disclosure, or three (3) years if 42 U.S.C. § 17935(c) applies. Business Associate shall provide to Covered Entity, within twenty (20) business days after receipt of a written request from Covered Entity, information collected in accordance with this Section 2.10 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

2.11 Indemnification. Business Associate shall indemnify, defend, and hold harmless Covered Entity, including its elected and appointed officers, employees, and agents, from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, penalties, fines and expenses (including attorney and expert witness fees), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement.

## OBLIGATION OF COVERED ENTITY

3.1 Notification of Restrictions to Use of Disclosure of PHI. Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the use of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own uses and disclosures accordingly.

3.2 Permissible Requests by Covered Entity. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by Covered Entity.

## TERM AND TERMINATION

4.1 Term. The term of this Business Associate Agreement shall be the same as the term of this Agreement. Business Associate's obligations under Sections 2.1 (as modified by Section 4.2), 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 4.3 and 5.2 shall survive the termination or expiration of this Agreement.

4.2 Termination for Cause. In addition to and notwithstanding the termination provisions set forth in this Agreement, upon either party's knowledge of a material breach of this BAA by the other party, the party with knowledge of the other party's breach shall:

(a) Provide fifteen (15) business days for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not

cure the breach or end the violation no later than the fifteen (15) business day cure period;

(b) Immediately terminate this Agreement if a party has breached a material term of the BAA and cure is not possible; or

(c) If neither termination nor cure is feasible, report the violation to the Secretary of the federal Department of Health and Human Services.

4.3 Disposition of Protected Health Information Upon Termination or Expiration.

(a) Except as provided in paragraph (b) of this section, following termination for any reason or expiration of this Agreement, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

**MISCELLANEOUS**

5.1 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.2 Use of Subcontractors and Agents. Business Associate shall require each of its agents and subcontractors that receive Protected Health Information from Business Associate, or create Protected Health Information for Business Associate, on behalf of Covered Entity, to execute a written agreement obligating the agent or subcontractor to comply with the same or substantially the same terms of this Business Associate Agreement.

5.3 Relationship to Services Agreement Provisions. In the event that a provision of this Business Associate Agreement is contrary to another provision of this Agreement, the provision of this Business Associate Agreement shall control.

Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of this Agreement.

5.4 Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy or Security Regulations means the section as in effect or as amended.

5.5 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the Privacy and Security Regulations.

5.6 Amendment. This BAA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both parties. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity and/or Business Associate to comply with the requirements of the Privacy and Security Regulations, the HITECH Act, and other privacy laws governing Protected Health Information, to the extent these law or regulations are amended or interpreted in a manner that changes the obligations of Business Associate or Covered Entity that are embodied in terms of this BAA.

5.7 Integration. This BAA is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter.

5.8 HITECH Act Applicability. Business Associate acknowledges that enactment of the HITECH Act amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Business Associate under the Privacy and Security Rule. To the extent not referenced or incorporated herein, requirements applicable to Business Associate under the HITECH Act are hereby incorporated by reference into this BAA. Business Associate agrees to comply with applicable requirements imposed under the HITECH Act, as of the effective date of each such requirement.

## INSURANCE REQUIREMENTS

## EXHIBIT C

### GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting McKesson's indemnification to Customer, and in the performance of this MA and until all of its obligations pursuant to this MA have been met, McKesson shall provide and maintain at its own expense insurance coverage satisfying the requirements specified below. These minimum insurance coverage terms, types and limits (the "**Required Insurance**") also are in addition to and separate from any other Contractual obligation imposed upon McKesson pursuant to this MA. The Customer in no way warrants that the Required Insurance is sufficient to protect the McKesson for liabilities which may arise from or relate to this MA.

**Evidence of Coverage and Notice to Customer**

- Certificate(s) of insurance coverage (Certificate) shall be delivered to Customer at the address shown below upon Customer's written request.
- McKesson shall endeavor to provide Renewal Certificates to Customer not less than 10 days prior to McKesson's policy expiration dates.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the McKesson entity identified as the contracting party in this MA or McKesson's parent or affiliate (as long as the policy covers McKesson). Certificates shall provide the full name of each insurer providing coverage and its NAIC (National Association of Insurance Commissioners) identification number.
- Neither the Customer's failure to obtain, nor the Customer's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the McKesson, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to the address listed on the first page of the MA. Customer also shall promptly report to McKesson any injury or property damage accident or incident, including any injury to a Customer employee occurring on Customer property, and any loss, disappearance, destruction, misuse, or theft of Customer property, monies or securities entrusted to McKesson. McKesson shall notify Customer as soon as practicable after they become aware of any third party claim or suit filed against McKesson or any of its Subcontractors which arises from or relates to this MA, and could result in the filing of a claim or lawsuit against McKesson and/or Customer.

**Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively Customer and its Agents) shall be provided additional insured status under McKesson's General Liability policy with respect to liability arising out of McKesson's ongoing and completed operations performed on behalf of the Customer. Acceptance of McKesson's insurance limits by Customer shall not relieve McKesson of liability. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

**Cancellation of Insurance**

McKesson shall provide Customer with, or McKesson's insurance policies shall contain a provision that Customer shall receive, written notice of cancellation of any Required Insurance. The written notice shall be provided to Customer thirty (30) days prior to policy expiration.

**Failure to Maintain Insurance**
McKesson's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a breach of the MA, upon which Customer immediately may withhold payments due to McKesson, and/or suspend or terminate this MA in accordance with its terms.

**Insurer Financial Ratings**
Coverage shall be placed with insurers acceptable to the Customer with A.M. Best ratings of not less than A-VII unless otherwise approved by Customer.

**McKesson's Insurance Shall Be Primary**
McKesson's insurance policies, with respect to any claims related to this MA, shall be primary with respect to all other sources of coverage available to McKesson. Any Customer maintained insurance or self-insurance coverage shall be in excess of and not contribute to any McKesson coverage.

**Subcontractor Insurance Coverage Requirements**
If applicable, McKesson shall provide Customer with each Subcontractor's separate evidence of insurance coverage. McKesson shall be responsible for verifying each Subcontractor complies with the Required Insurance provisions herein, and shall require that each Subcontractor name the County and McKesson as additional insureds on the Subcontractor's General Liability policy. McKesson shall obtain Customer's prior review and approval of any Subcontractor request for modification of the Required Insurance.

**Deductibles and Self-Insured Retentions (SIRs)**
McKesson's policies shall not obligate the Customer to pay any portion of any McKesson deductible or SIR.

**Claims Made Coverage**
If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this MA. McKesson understands and agrees it shall maintain such coverage for a period of not less than three (3) years following MA expiration, termination or cancellation.

**Application of Excess Liability Coverage**
McKesson may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

**Separation of Insureds**
General Liability and Auto Liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

**Alternative Risk Financing Programs**
The Customer reserves the right to review, McKesson use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions.

**Customer Review and Approval of Insurance Requirements**
The Customer reserves the right to adjust the Required Insurance provisions, conditioned upon Customer's determination of changes in risk exposures and with prior written notice and MA of McKesson. .

**INSURANCE COVERAGE**

**Commercial General Liability** insurance with limits of not less than:

| | |
|---|---|
| General Aggregate: | $2 million |
| Product/Completed Operations Aggregate | $1 million |
| Personal and Advertising Injury | $1 million |
| Each Occurrence: | $1 million |

**Workers Compensation** insurance or qualified self-insurance satisfying statutory requirements. If McKesson will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the Customer as the Alternate Employer, and the endorsement form shall be modified to provide that Customer will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to McKesson's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

McKESSON
*Empowering Healthcare*

## ORDER FORM

**This ORDER FORM** amends the McKesson Health Solutions Master Agreement No. 15252, dated contemporaneously herewith and incorporating all referenced Exhibits, Schedules, and Attachments (**"Order Form"**) and is made binding as of the latest date in the signature block below (**"OF Effective Date"**).

### Exhibits

| | |
|---|---|
| **A-1** | **Payment Schedule, Term and Administration** |
| **A-3** | **Medical Management Terms** |
| **B-1** | **Implementation, Education, and Consulting Services** |
| **C-1** | **Alliance Partner Terms** |
| **D-1** | **Reserved** |
| **E-1** | **Products and Services** |

The pricing in this Order Form and McKesson's corresponding offer to Customer expires unless McKesson receives this Order Form signed by Customer on or before March 31, 2012.

By signing this Order Form, Customer acknowledges and agrees that (a) McKesson has made no warranty or commitment with regard to any functionality not Generally Available as of the OF Effective Date, whether or not included as part of Software Maintenance Services, for any of the Software licensed by this Order Form; and (b) Customer has not relied on the availability of any future version of the purchased Product or any other future Product in executing this Order Form.

Each signatory hereto represents and warrants that it is duly authorized to sign, execute, and deliver this Order Form on behalf of the party it represents and the applicable Facilities.

**LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY, A LOCAL PUBLIC AGENCY D.B.A. L.A. CARE HEALTH PLAN**

By: _____
Name: Howard A. Kahn
Title: Chief Executive Officer
Date: 29th March 2012

**MCKESSON HEALTH SOLUTIONS LLC**

By: _____
Name: PAUL ANTONELLIS
Title: DIRECTOR, SALES & ACCOUNT MGMT
Date: 3-28-2012

***CUSTOMER – For Execution:***
McKesson no longer requires the exchanging and signing of hard copy contracts. Please fax or email (scanned document) the signed agreement to your sales executive or account manager.

McKesson Health Solutions LLC
5995 Windward Parkway
Alpharetta, Georgia 30005
Attn: General Counsel
Fax: 404-338-5138

With a copy to:

McKesson Health Solutions LLC
5 Country View Road
Malvern, PA 19355
Attn: Vice President of Product Operations
Fax: 610-993-4303

| | |
|---|---|
| **Customer Number** | **LAC502** |
| **Service Contract Number** | **MHS5689** |
| **SAP Number** | **1038995** |
| **Contract Number** | **19544** |

**FOR MCKESSON INTERNAL USE ONLY**

**Submit fully executed contract to:**
McKesson Health Solutions
Attn. Account Management
275 Grove St.
Suite 1-110
Auburndale, MA 02466
Fax: 617-273-3777

## EXHIBIT A-1

## PAYMENT SCHEDULE, TERM AND ADMINISTRATION

### PAYMENT SCHEDULE

### SOFTWARE, CLINICAL CONTENT, AND ASP SERVICES LICENSE FEES

Notwithstanding anything to the contrary in the MA, the annual payments for the Software and Clinical Content and the number of Covered Lives set forth herein are not subject to decrease.

| | | |
|---|---|---|
| **$87,452.99*** | due on the OF Effective Date. | Such fee includes a twenty-five percent (25%) discount. |

### OPTION TERMS

| | | |
|---|---|---|
| **$87,452.99*** | due on the first anniversary of the OF Effective Date. | Such fee includes a twenty-five percent (25%) discount. |
| **$87,452.99*** | due on the second anniversary of the OF Effective Date. | Such fee includes a twenty-five percent (25%) discount. |
| **$87,452.99*** | due on the third anniversary of the OF Effective Date. | Such fee includes a twenty-five percent (25%) discount. |
| **$87,452.99*** | due on the fourth anniversary of the OF Effective Date. | Such fee includes a twenty-five percent (25%) discount. |

*Plus applicable taxes.

### SERVICES FEES

**$23,250.00*** due on the OF Effective Date.

### OPTION TERMS

**$23,250.00*** due on the first anniversary of the OF Effective Date.
**$23,250.00*** due on the second anniversary of the OF Effective Date.
**$23,250.00*** due on the third anniversary of the OF Effective Date.
**$23,250.00*** due on the fourth anniversary of the OF Effective Date.

*Plus applicable taxes.

**TERM:** The License Term of this Order Form is one year from the OF Effective Date (the **"Initial Term"**). The Initial Term of this Order Form will renew automatically for four-one year terms (each, an **"Option Term,"** together the Initial Term and Renewal Term, will be referred to as the **"Term"**) upon the expiration of the Initial Term and each subsequent Renewal Term, unless either party provides written notice of termination to the other party not less than 60 days prior to the expiration of the then current term.

**UNAVAILABILITY OF FUNDS**: McKesson acknowledges that Customer is funded by the County of Los Angeles. Customer represents that it has obtained funding for the initial amounts due and payable under this Order Form within the first 12 months from the OF Effective Date. The parties agree that, should funds become unavailable to Customer from the County of Los Angeles to continue Customer's obligations under this Order Form, Customer may terminate this Order Form upon 60 days prior written notice. Such termination shall be effective as of the next anniversary of the OF Effective Date. Customer agrees to remit all amounts due and payable up to the termination date of this Order Form. In no event shall there be any refunds due or credits granted to Customer under this additional provision.

**INCREASE IN USAGE BASED VARIABLES:** If, during the Initial term, Customer's Usage-Based Variables increase above the limitation set forth herein, or in an Order Form, for any reason other than Customer's acquisition of another entity (**"Natural Growth"**), Customer will pay the additional fees based on rates negotiated by the parties for such increased Usage-Based Variables.

Pursuant to this Section, the parties acknowledge and agree that Customer will provide notification of any increase in the Usage-Based Variables and McKesson shall bill Customer accordingly for any increase in fees.

Customer is solely responsible for reporting all discounts or appropriate net prices received from McKesson pursuant to this Order Form on cost reports filed by Customer with any government entity.

Unless Customer provides McKesson prior to the OF Effective Date satisfactory evidence of exemption (including evidence of renewal if applicable) from applicable sales, use, value-added, or other similar taxes or duties, McKesson will invoice Customer for all such taxes applicable to the transactions under this Order Form.

**ADMINISTRATION:**

| **Sold To:** | **Bill To:** |
|---|---|
| Local Initiative Health Authority for Los Angeles County, a Local Public Agency d/b/a L.A. Care Health Plan | Local Initiative Health Authority for Los Angeles County, a Local Public Agency d/b/a L.A. Care Health Plan |
| 1055 W. 7th Street | 1055 W. 7th Street |
| 10th Floor | 10th Floor |
| Los Angeles, CA 90017 | Los Angeles, CA 900017 |
| | Attention: John Wallace, VP |
| | Telephone: 213-694-1250 |
| | E-mail:jwallace@lacare.org |
| | |
| Taxable: ☒ Yes ☐ No | |
| **Ship To:** See Exhibit E-1. | **Download Central Administrator:** James Gerson |
| | Email: jgerson@dhs.lacounty.gov |
| | |
| | **IRR Administrator:** Pamela Hawkins |
| | Email: phawkins@dhs.lacounty.gov |

## EXHIBIT A-3

## MEDICAL MANAGEMENT TERMS

### SECTION 1: CAREENHANCE® CLINICAL MANAGEMENT SOFTWARE ("CCMS") INCLUDING CAREENHANCE® REVIEW MANAGER ENTERPRISE SOFTWARE ("CERMe")

The following terms apply to the CCMS and CERMe Software, Clinical Content and ASP Services:

1.1 Display of CPT Codes. McKesson and Customer acknowledge and agree that the display and search functionality of the CPT Codes within the CareEnhance® Review Manager Bookview and the InterQual® SmartSheets™ is for Customer's internal use only. Should Customer desire to make the Clinical Content available over the internet or to its Provider network, the parties will execute an amendment for such expanded use.

### SECTION 2: INTERQUAL® INTERRATER RELIABILITY SUITE

The following terms only apply to the licensure of the InterQual Interrater Reliability Suite Software, Clinical Content, and ASP Services:

2.1 Data. Customer acknowledges that McKesson may use the data collected from the Customer's use and customization of the InterQual Interrater Reliability Suite for various internal purposes, including, but not limited to product development and improvement, marketing, benchmark reporting and identifying additional Customer specific training opportunities. All information collected will be used and maintained in accordance with the Confidentiality provisions of the MA. For purposes of clarification, Data does not include PHI.

2.2 License Grant. No license is granted for the use of the services and Products licensed hereunder for the preparation of tests unrelated to the Clinical Content.

**EXHIBIT B-1**

**IMPLEMENTATION, EDUCATION, AND CONSULTING SERVICES**

**InterQual® Learning Source ("ILS") Training**

Table 1 (MHS5689-E): Services for LA Care

| ILS Training Package(s) | *Number of Participants | Year One | Optional Years 2-5 |
|---|---|---|---|
| ILS LOC: Post Acute Inpatient (SAC/SNF) Review Manager<br>• WBT - Getting Started: Review Manager<br>• WBT - Conducting Reviews: InterQual® Post Acute Inpatient Criteria<br>• VILT - LOC: Post Acute Inpatient - SAC/SNF (Review Manager)<br><br>Material: 75005571 | Up to 30 participants annually | $4,650.00 | $4,650.00 |
| ILS LOC: Post Acute Outpatient (Home Care) Review Manager<br>• WBT - Getting Started: Review Manager<br>• VILT - LOC: Post Acute Outpatient - Home Care (Review Manager)<br><br>Material: 75005574 | Up to 30 participants annually | $4,650.00 | $4,650.00 |
| ILS CP: Specialty Referral Review Manager<br>• WBT - Getting Started: Review Manager<br>• VILT - CP: Specialty Referral (Review Manager)<br><br>Material: 75005718 | Up to 30 participants annually | $4,650.00 | $4,650.00 |
| ILS CP: DME Review Manager<br>• WBT - Getting Started: Review Manager<br>• VILT - CP: DME (Review Manager)<br><br>Material: 75005578 | Up to 30 participants annually | $4,650.00 | $4,650.00 |
| ILS CP: Procedures Review Manager<br>• WBT - Getting Started: Review Manager<br>• WBT - Conducting Reviews: InterQual® Procedures Criteria<br>• VILT - CP: Procedures (Review Manager)<br><br>Material: 75005584 | Up to 30 participants annually | $4,650.00 | $4,650.00 |
| | **Fixed Fee Total:** | **$23,250.00** | **$23,250.00** |

*The fees are based on a rate of $155/participant. The pricing is based on the estimated 30 participants. Any increases or reduction in the number of participants will be made via a Change of Scope document. Customer will only be invoiced based on the actual number of participants. The rate of $155/participant is valid for the term of agreement (five years).

+The parties acknowledge that throughout the Initial Term of this Order Form, McKesson may provide Customer additional WBTs for the specific ILS Training Package(s) purchased by Customer herein at no additional cost to Customer.

## DEFINITIONS

**"Additional Service Offering (ASO)"** An agreement to add additional services.
**"CareEnhance® Review Manager Enterprise" ("Review Manager")** also referred to as "the Software."
**"Fixed Fee (FF)"** means that the Services will be delivered by McKesson at a set price, determined by McKesson, taking into account the project scope and the time and resources necessary to complete the Services.
**"ILT"** means on-site instructor-lead training at Customer's site.
**"InterQual® Criteria: Long-Term Acute Care (LTAC), Outpatient Rehabilitation and Chiropractic (ORC), Subacute / Skilled Nursing Facility (SAC/SNF) and Rehabilitation (Rehab)"** are types of InterQual® ® criteria
**"VILT"** means virtual instructor-lead training. This method of delivering traditional classroom courses using the Internet and teleconferencing technologies whereby the instructor and students are at independent locations.
**"WBT"** means self-paced, web-based training. Training is interactive, self-paced, and includes participant testing to validate learning concepts.

## PAYMENT TERMS - SERVICES FEES

**$23,250.00*** due on the OF Effective Date.

## OPTION TERMS

**$23,250.00*** due on the first anniversary of the OF Effective Date.

**$23,250.00*** due on the second anniversary of the OF Effective Date.

**$23,250.00*** due on the third anniversary of the OF Effective Date.

**$23,250.00*** due on the fourth anniversary of the OF Effective Date.

* plus any applicable taxes

## SERVICE ASSUMPTIONS

1. Dates for training will be finalized after this Order Form has been signed by both parties.
2. Prior to training, Customer must meet the minimum technical specifications per the *InterQual® Learning Source Technical Requirements* document.
3. Customer shall adhere to the terms and conditions related to ILS (received upon access to ILS).
4. The self-paced WBT module(s) should be completed prior to the VILT.
5. Participants should have a working knowledge of computers in the Windows environment.
6. For VILT, each participant must be set up with a learner login credential to access the transcript, self-paced WBT module(s) and a certificate of attendance.
7. The number of session for VILT training will be determined by McKesson.
8. Prior to training, Customer will provide all necessary information system support resources; acquire all hardware and software; and install, configure and test the database server and workstation hardware.
9. McKesson will deliver the Services related to McKesson developed products only.
10. Customer will receive CEU credits upon completion of both applicable criteria based WBT's and instructor-based program.
11. Training Services are provided for participants employed by Customer or DHS only. The training fee is intended for use by Customer, DHS, employees of Customer or DHS, and Permitted Users only and is not to be sold or offered to any other entity.
12. Training Services will not be carried over from prior years.
13. Customer will receive training annually, if optional years are exercised, throughout the Initial Term of this Contract Supplement/Order Form.

14. McKesson will contact Customer to schedule training although it is ultimately Customer's responsibility for contacting McKesson to ensure that annual training sessions(s) are scheduled.

## CANCELLATION POLICY

McKesson will not cancel, but may reschedule training dates due to circumstances beyond McKesson's control. Customer may reschedule training dates due to circumstances beyond Customer's control. In the event of such occurrence, there will be no financial penalty imposed on McKesson or Customer.

### VILT Training Cancellation Policy

Except as provided above, should Customer decide to cancel the web training program within 14 days of the scheduled training, Customer will need to enter into an ASO with McKesson for the rescheduled training. Training fees (i.e. class fee) will not be refunded if cancelled within 14 days of the scheduled training, except as provided above.

## CHANGE OF SCOPE / CONSULTING RATES

Customer may request changes to the Services at any time. Since a change could affect the estimated completion of the Services, resources needed for the Services and/or overall project scope, all changes must be submitted, evaluated and approved by McKesson and Customer prior to altering the Services Exhibit. McKesson will evaluate whether the change is within the scope of this Services Exhibit. If the parties agree that the change is not within the scope of this Services Exhibit, Customer may be required to pay additional fees. If the change results in a decrease in the scope of this Service Exhibit, the parties will agree to an equitablereduction in the fees.

## EXHIBIT C-1

## ALLIANCE PARTNER SCHEDULE

**"Alliance Partner"** means a McKesson approved third party listed (a) which has manufactured a healthcare software application, and McKesson has validated integration between the application and the Software and/or Clinical Content and (b) with which Customer has established a direct relationship to license such healthcare software application, including interface software, updates, maintenance and support of said application and integration.

Pursuant to the MA, McKesson hereby acknowledges that Customer may integrate the licensed Software and/or Clinical Content with the Alliance Partner listed below.

For each Facility: Los Angeles County Ambulatory Care Network

**Alliance Partner:** DST Health Solutions, Inc.

**Currently Validated Alliance Partner Application**: CareSTEPP™

Customer may not install any integration to the Software and/or Clinical Content without the prior written consent of McKesson. Only integrations from McKesson's Alliance Partners, or other integrations that have been approved by McKesson in writing, are permitted to be used in conjunction with the Software and/or Clinical Content. Additionally, notwithstanding anything to the contrary in the MA or this Order Form, Customer is solely responsible for securing the installation, updates, support, and maintenance of any integration. Customer will not implement an Alliance Partner integration for a new release or update until the Alliance Partner has obtained a validation certificate from McKesson.

WITH RESPECT TO ANY PRODUCT OR INTEGRATION MANUFACTURED BY AN ALLIANCE PARTNER OR NOT MANUFACTURED BY MCKESSON, CUSTOMER WILL LOOK TO THE ALLIANCE PARTNER OR MANUFACTURER OF THE PRODUCT OR INTEGRATION FOR ANY WARRANTY THEREON. MCKESSON DOES NOT REPRESENT OR WARRANT THAT ANY ALLIANCE PARTNER REFERENCED HEREIN OR UNDER ANY APPLICABLE ORDER FORM HAS VALIDATED WITH ANY PARTICULAR VERSION OF THE SOFTWARE AND/OR CLINICAL CONTENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE PROVIDED BY MCKESSON, ITS AGENTS OR EMPLOYEES WILL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES EXPRESSLY PROVIDED IN THE MA AND ORDER FORM.

## EXHIBIT E-1

## PRODUCTS AND SERVICES

1. As of the OF Effective Date, Customer is granted a license to the Software, Clinical Content and ASP Services set forth on the following page.

2. On the following page, any product for which the "No. of Copies" is blank is either available online or included in another product.

3. Customer acknowledges and agrees that it will maintain the associated licenses, hardware and software set forth in the Required Environments Guide for the Software and ASP Services.

4. The InterQual® Interrater Reliability Software set forth on the following page is considered to be part of the ASP Services and the terms and conditions contained in the MA will apply.

5. THIRD PARTY TERMS.

As indicated on the following page, Customer agrees to the applicable Third Party Terms and conditions, as set forth at http://customerportal.mckesson.com, which Customer may access using the following confidential login information:

User ID: contractprovisions@mckesson.com
Password (case sensitive): Portal!Access

For the avoidance of doubt, if there are no terms for the Third Party Products listed on the McKesson Customer Portal, then no Third Party Terms and conditions apply. In the event that a Third Party Software provider raises its licensing fees of such Third Party Software, McKesson may increase its annual license fees upon the next anniversary of such Order Form.

**Facility**
Los Angeles County Ambulatory Care Network
1000 South Fremont Avenue
Building A-9 East, 2nd Floor, Unit 4
Alhambra, CA 91803

**Attn:** James Gerson, CMO
**Tel:** +1 (626) 299-5300
**E-Mail:** jgerson@dhs.lacounty.gov

| | Size / Type | Users | No. of Copies |
|---|---|---|---|
| **InterQual® Clinical Content** | | | |
| Durable Medical Equipment | 120,000 / CL | 0 | |
| Home Care | 120,000 / CL | 0 | 0 |
| InterQual® Clinical Evidence Summaries | 120,000 / CL | 0 | |
| Procedures Adult | 120,000 / CL | 0 | |
| Procedures Pediatric | 120,000 / CL | 0 | |
| Specialty Referral | 120,000 / CL | 0 | |
| Subacute & SNF | 120,000 / CL | 0 | 0 |
| **Software** | | | |
| CareEnhance® Review Manager Enterprise (Access) | 120,000 / CL | 30 | 1 |
| CareEnhance® Review Manager Enterprise (SQL) | 120,000 / CL | 30 | 1 |
| InterQual® View (Access) | 120,000 / CL | 30 | |
| InterQual® View (SQL) | 120,000 / CL | 30 | |
| Interrater Reliability Standard Tests | 120,000 / CL | 30 | |
| **3rd Party** | | | |
| AMA CPT Codes IQ | 120,000 / CL | 30 | |
| Business Objects Crystal Reports | 120,000 / CL | 30 | |